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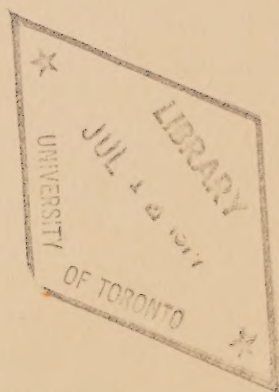


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Children Act 1975

CHAPTER 72



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Children Act 1975

CHAPTER 72

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ELIZABETH II



Children Act 1975

1975 CHAPTER 72

An Act to make further provision for children.

[12th November 1975]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

ADOPTION

The Adoption Services

1.—(1) It is the duty of every local authority to establish and maintain within their area a service designed to meet the needs, of Adoption Services, in relation to adoption, of—

- (a) children who have been or may be adopted,
- (b) parents and guardians of such children, and
- (c) persons who have adopted or may adopt a child,

and for that purpose to provide the requisite facilities, or secure that they are provided by approved adoption societies.

(2) The facilities to be provided as part of the service maintained under subsection (1) include—

- (a) temporary board and lodging where needed by pregnant women, mothers or children;

PART I

- (b) arrangements for assessing children and prospective adopters, and placing children for adoption ;
- (c) counselling for persons with problems relating to adoption.

(3) The facilities of the service maintained under subsection (1) shall be provided in conjunction with the local authority's other social services and with approved adoption societies in their area, so that help may be given in a co-ordinated manner without duplication, omission or avoidable delay.

(4) The services maintained under subsection (1) by local authorities in England and Wales may be collectively referred to as "the Adoption Service" and those maintained by local authorities in Scotland, as "the Scottish Adoption Service", and a local authority or approved adoption society may be referred to as an adoption agency.

Local
authorities'
social services.

2. The social services referred to in section 1(3) are the functions of a local authority which stand referred to the authority's social services committee or, in Scotland, social work committee, including, in particular but without prejudice to the generality of the foregoing, a local authority's functions relating to—

- (a) the promotion of the welfare of children by diminishing the need to receive children into care or keep them in care, including (in exceptional circumstances) the giving of assistance in cash ;
- (b) the welfare of children in the care of a local authority ;
- (c) the welfare of children who are foster children within the meaning of the Children Act 1958 ;
- (d) children who are subject to supervision orders made in matrimonial proceedings ;
- (e) the provision of residential accommodation for expectant mothers and young children and of day-care facilities ;
- (f) the regulation and inspection of nurseries and child minders ;
- (g) care and other treatment of children through court proceedings and children's hearings.

1958 c. 65.

Duty to
promote
welfare of
child.

3. In reaching any decision relating to the adoption of a child, a court or adoption agency shall have regard to all the circumstances, first consideration being given to the need to safeguard and promote the welfare of the child throughout his childhood ; and shall so far as practicable ascertain the wishes

and feelings of the child regarding the decision and give due consideration to them, having regard to his age and understanding.

4.—(1) A body desiring to act as an adoption society or, if it is already an adoption society, desiring to continue to act as such in England and Wales or in Scotland may, in the manner specified by regulations made by the Secretary of State, apply to the Secretary of State for his approval to its doing so. Approval of adoption societies.

(2) On an application under subsection (1), the Secretary of State shall take into account the matters relating to the applicant specified in subsections (3) to (5) and any other relevant considerations, and if, but only if, he is satisfied that the applicant is likely to make, or, if the applicant is an approved adoption society, is making, an effective contribution to the Adoption Service or, as the case may be, to the Scottish Adoption Service, he shall by notice to the applicant give his approval, which shall be operative from a date specified in the notice or, in the case of a renewal of approval, from the date of the notice.

(3) In considering the application, the Secretary of State shall have regard, in relation to the period for which approval is sought, to the following—

- (a) the applicant's adoption programme, including, in particular, its ability to make provision for children who are free for adoption,
- (b) the number and qualifications of its staff,
- (c) its financial resources, and
- (d) the organisation and control of its operations.

(4) Where it appears to the Secretary of State that the applicant is likely to operate extensively within the area of a particular local authority he shall ask the authority whether they support the application, and shall take account of any views about it put to him by the authority.

(5) Where the applicant is already an approved adoption society or, whether before or after the passing of this Act, previously acted as an adoption society, the Secretary of State, in considering the application, shall also have regard to the record and reputation of the applicant in the adoption field, and the areas within which and the scale on which it is currently operating or has operated in the past.

(6) If after considering the application the Secretary of State is not satisfied that the applicant is likely to make or, as the case may be, is making an effective contribution to the Adoption Service or, as the case may be, to the Scottish Adoption Service, the Secretary of State shall, subject to section 6(1) and (2), by notice inform the applicant that his application is refused.

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(7) If not withdrawn earlier under section 5, approval given under this section shall last for a period of three years from the date on which it becomes operative, and shall then expire or, in the case of an approved adoption society whose further application for approval is pending at that time, shall expire on the date that application is granted or, as the case may be, refused.

Withdrawal
of approval.

5.—(1) If, while approval of a body under section 4 is operative, it appears to the Secretary of State that the body is not making an effective contribution to the Adoption Service or, as the case may be, to the Scottish Adoption Service, he shall subject to section 6(3) and (4) by notice to the body withdraw the approval from a date specified in the notice.

(2) If an approved adoption society fails to provide the Secretary of State with information required by him for the purpose of carrying out his functions under subsection (1), or fails to verify such information in the manner required by him, he may by notice to the society withdraw the approval from a date specified in the notice.

(3) Where approval is withdrawn under subsection (1) or (2) or expires the Secretary of State may direct the body concerned to make such arrangements as to children who are in its care and other transitional matters as seem to him expedient.

Procedure on
refusal to
approve, or
withdrawal
of approval
from, societies.

6.—(1) Before notifying a body which has applied for approval that the application is refused in accordance with section 4(6) the Secretary of State shall serve on the applicant a notice—

- (a) setting out the reasons why he proposes to refuse the application ;
- (b) informing the applicant that he may make representations in writing to the Secretary of State within 28 days of the date of service of the notice.

(2) If any representations are made by the applicant in accordance with subsection (1), the Secretary of State shall give further consideration to the application taking into account those representations.

(3) The Secretary of State shall, before withdrawing approval of an adoption society in accordance with section 5(1), serve on the society a notice—

- (a) setting out the reasons why he proposes to withdraw the approval ; and
- (b) informing the society that they may make representations in writing to the Secretary of State within 28 days of the date of service of the notice.

PART I

(4) If any representations are made by the society in accordance with subsection (3), the Secretary of State shall give further consideration to the withdrawal of approval under section 5(1) taking into account those representations.

(5) This section does not apply where the Secretary of State, after having considered any representations made by the applicant in accordance with this section, proposes to refuse approval or, as the case may be, to withdraw approval for reasons which have already been communicated to the applicant in a notice under this section.

7.—(1) If it appears to the Secretary of State that an approved adoption society, or one in relation to which approval has been withdrawn under section 5 or has expired, is inactive or defunct he may, in relation to any child who is or was in the care of the society, direct what appears to him to be the appropriate local authority to take any such action as might have been taken by the society or by the society jointly with the authority; and if apart from this section the authority would not be entitled to take that action, or would not be entitled to take it without joining the society in the action, it shall be entitled to do so.

Inactive or
defunct
adoption
societies.

(2) Before giving a direction under subsection (1) the Secretary of State shall, if practicable, consult both the society and the authority.

Adoption orders

8.—(1) An adoption order is an order vesting the parental rights and duties relating to a child in the adopters, made on their application by an authorised court.

Adoption
orders.

(2) The order does not affect the parental rights and duties so far as they relate to any period before the making of the order.

(3) The making of the order operates to extinguish—

(a) any parental right or duty relating to the child which—

(i) is vested in a person (not being one of the adopters) who was the parent or guardian of the child immediately before the making of the order, or

(ii) is vested in any other person by virtue of the order of any court; and

(b) any duty arising by virtue of an agreement or the order of a court to make payments, so far as the payments are in respect of the child's maintenance for any period after the making of the order or any other matter comprised in the parental duties and relating to such a period.

PART I

(4) Subsection (3)(b) does not apply to a duty arising by virtue of an agreement—

(a) which constitutes a trust, or

(b) which expressly provides that the duty is not to be extinguished by the making of an adoption order.

(5) An adoption order may not be made in relation to a child who is or has been married.

(6) An adoption order shall not be made in Scotland in relation to a child who is a minor unless with the consent of the minor; except that where the court is satisfied that the minor is incapable of giving his consent to the making of the order, it may dispense with that consent.

(7) An adoption order may contain such terms and conditions as the court thinks fit.

(8) An adoption order may be made notwithstanding that the child is an adopted child.

(9) Schedule 1 contains for England and Wales further provisions about the effect of adoption and related or comparable provisions about legitimation.

(10) Schedule 2 has effect as respects the status conferred in Scotland by adoption and related matters.

Child to live
with adopters
before order
made.

9.—(1) Where—

(a) the applicant, or one of the applicants, is a parent, step-parent or relative of the child, or

(b) the child was placed with the applicants by an adoption agency or in pursuance of an order of the High Court, an adoption order shall not be made unless the child is at least 19 weeks old and at all times during the preceding 13 weeks had his home with the applicants or one of them.

(2) Where subsection (1) does not apply, an adoption order shall not be made unless the child is at least twelve months old and at all times during the preceding twelve months had his home with the applicants or one of them.

(3) An adoption order shall not be made unless the court is satisfied that sufficient opportunities to see the child with the applicant or, in the case of an application by a married couple, both applicants together in the home environment have been afforded—

(a) where the child was placed with the applicant by an adoption agency, to that agency, or

(b) in any other case, to the local authority within whose area the home is.

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Adoption by
married
couple.

10.—(1) Subject to sections 37(1) and 53(1), an adoption order may be made on the application of a married couple where each has attained the age of 21 but an adoption order shall not otherwise be made on the application of more than one person.

(2) An adoption order shall not be made on the application of a married couple unless—

(a) at least one of them is domiciled in a part of the United Kingdom, or in the Channel Islands or the Isle of Man, or

(b) the application is for a Convention adoption order and section 24 is complied with.

(3) Where the application is made to a court in England or Wales and the married couple consist of a parent and step-parent of the child, the court shall dismiss the application if it considers the matter would be better dealt with under section 42 (orders for custody etc.) of the Matrimonial Causes Act 1973.

1973 c. 18.

11.—(1) Subject to sections 37(1) and 53(1), an adoption order may be made on the application of one person where he has attained the age of 21 and—

Adoption by
one person.

(a) is not married, or

(b) is married and the court is satisfied that—

(i) his spouse cannot be found, or

(ii) the spouses have separated and are living apart, and the separation is likely to be permanent, or

(iii) his spouse is by reason of ill health, whether physical or mental, incapable of making an application for an adoption order.

(2) An adoption order shall not be made on the application of one person unless—

(a) he is domiciled in a part of the United Kingdom, or in the Channel Islands or the Isle of Man, or

(b) the application is for a Convention adoption order and section 24 is complied with.

(3) An adoption order shall not be made on the application of the mother or father of the child alone unless the court is satisfied that—

(a) the other natural parent is dead or cannot be found, or

(b) there is some other reason justifying the exclusion of the other natural parent,

and where such an order is made the reason justifying the exclusion of the other natural parent shall be recorded by the court.

PART I

1973 c. 18.

(4) Where the application is made to a court in England or Wales and the applicant is a step-parent of the child the court shall dismiss the application if it considers the matter would be better dealt with under section 42 (orders for custody etc.) of the Matrimonial Causes Act 1973.

Parental
agreement.

12.—(1) An adoption order shall not be made unless—

- (a) the child is free for adoption ; or
- (b) in the case of each parent or guardian of the child the court is satisfied that—
 - (i) he freely, and with full understanding of what is involved, agrees unconditionally to the making of the adoption order (whether or not he knows the identity of the applicants), or
 - (ii) his agreement to the making of the adoption order should be dispensed with on a ground specified in subsection (2).

(2) The grounds mentioned in subsection (1)(b)(ii) are that the parent or guardian—

- (a) cannot be found or is incapable of giving agreement ;
- (b) is withholding his agreement unreasonably ;
- (c) has persistently failed without reasonable cause to discharge the parental duties in relation to the child ;
- (d) has abandoned or neglected the child ;
- (e) has persistently ill-treated the child ;
- (f) has seriously ill-treated the child (subject to subsection (5)).

(3) Subsection (1) does not apply in any case where the child is not a United Kingdom national and the application for the adoption order is for a Convention adoption order.

(4) Agreement is ineffective for the purposes of subsection (1)(b)(i) if given by the mother less than six weeks after the child's birth.

(5) Subsection (2)(f) does not apply unless (because of the ill-treatment or for other reasons) the rehabilitation of the child within the household of the parent or guardian is unlikely.

(6) A child is free for adoption if he is the subject of an order under section 14 and the order has not been revoked under section 16.

Religious
upbringing of
adopted child.

13. An adoption agency shall in placing a child for adoption have regard (so far as is practicable) to any wishes of the child's parents and guardians as to the religious upbringing of the child.

14.—(1) Where, on an application by an adoption agency, an authorised court is satisfied in the case of each parent or guardian of the child that— PART I
Freeing child
for adoption.

- (a) he freely, and with full understanding of what is involved, agrees generally and unconditionally to the making of an adoption order, or
- (b) his agreement to the making of an adoption order should be dispensed with on a ground specified in section 12(2),

the court shall, subject to subsection (5), make an order declaring the child free for adoption.

(2) No application shall be made under subsection (1) unless—

- (a) it is made with the consent of a parent or guardian of the child, or
- (b) the adoption agency is applying for dispensation under subsection (1)(b) of the agreement of each parent or guardian of the child, and the child is in the care of the adoption agency.

(3) No agreement required under subsection (1)(a) shall be dispensed with under subsection (1)(b) unless the child is already placed for adoption or the court is satisfied that it is likely that the child will be placed for adoption.

(4) An agreement by the mother of the child is ineffective for the purposes of this section if given less than six weeks after the child's birth.

(5) An order under this section shall not be made in Scotland in relation to a child who is a minor unless with the consent of the child; except that where the court is satisfied that the minor is incapable of giving his consent to the making of the order, it may dispense with that consent.

(6) On the making of an order under this section, the parental rights and duties relating to the child vest in the adoption agency, and subsections (2) and (3) of section 8 apply as if the order were an adoption order and the agency were the adopters.

(7) Before making an order under this section the court shall satisfy itself that each parent or guardian who can be found has been given an opportunity of making, if he so wishes, a declaration that he prefers not to be involved in future questions concerning the adoption of the child; and any such declaration shall be recorded by the court.

(8) Before making an order under this section in the case of an illegitimate child whose father is not its guardian, the court

PART I shall satisfy itself in relation to any person claiming to be the father that either—

- 1971 c. 3. (a) he has no intention of applying for custody of the child under section 9 of the Guardianship of Minors Act 1971 or under section 2 of the Illegitimate Children (Scotland) Act 1930, or
- 1930 c. 33. (b) if he did apply for custody under either of those sections the application would be likely to be refused.

Progress
reports to
former
parent.

15.—(1) This section and section 16 apply to any person (“the former parent”) who was required to be given an opportunity of making a declaration under section 14(7) but did not do so.

(2) Within the 14 days following the date twelve months after the making of the order under section 14, the adoption agency in which the parental rights and duties were vested on the making of the order, unless it has previously by notice to the former parent informed him that an adoption order has been made in respect of the child, shall by notice to the former parent inform him—

- (a) whether an adoption order has been made in respect of the child, and (if not)
- (b) whether the child has his home with a person with whom he has been placed for adoption.

(3) If at the time when the former parent is given notice under subsection (2) an adoption order has not been made in respect of the child, it is thereafter the duty of the adoption agency to give notice to the former parent of the making of an adoption order (if and when made), and meanwhile to give the former parent notice whenever the child is placed for adoption or ceases to have his home with a person with whom he has been placed for adoption.

(4) If at any time the former parent by notice makes a declaration to the adoption agency that he prefers not to be involved in future questions concerning the adoption of the child—

- (a) the agency shall secure that the declaration is recorded by the court which made the order under section 14, and
- (b) the agency is released from the duty of complying further with subsection (3) as respects that former parent.

Revocation of
section 14
order.

16.—(1) The former parent, at any time more than twelve months after the making of the order under section 14 when—

- (a) no adoption order has been made in respect of the child, and

- (b) the child does not have his home with a person with whom he has been placed for adoption,

may apply to the court which made the order for a further order revoking it on the ground that he wishes to resume the parental rights and duties.

(2) While the application is pending the adoption agency having the parental rights and duties shall not place the child for adoption without the leave of the court.

(3) Where an order freeing a child for adoption is revoked under this section—

- (a) the parental rights and duties relating to the child are vested in the individual or, as the case may be, the individuals in whom they vested immediately before that order was made ;
- (b) if the parental rights and duties, or any of them, vested in a local authority or voluntary organisation immediately before the order freeing the child for adoption was made, those rights and duties are vested in the individual, or as the case may be, the individuals in whom they vested immediately before they were vested in the authority or organisation ; and
- (c) any duty extinguished by virtue of section 8(3)(b) is forthwith revived,

but the revocation does not affect any right or duty so far as it relates to any period before the date of the revocation.

(4) Subject to subsection (5) if the application is dismissed on the ground that to allow it would contravene the principle embodied in section 3—

- (a) the former parent who made the application shall not be entitled to make any further application under subsection (1) in respect of the child, and
- (b) the adoption agency is released from the duty of complying further with section 15(3) as respects that parent.

(5) Subsection (4)(a) shall not apply where the court which dismissed the application gives leave to the former parent to make a further application under subsection (1), but such leave shall not be given unless it appears to the court that because of a change in circumstances or for any other reason it is proper to allow the application to be made.

PART I

Care etc. of
child on
refusal of
adoption
order.

17.—(1) Where on an application for an adoption order in relation to a child under the age of 16 the court refuses to make the adoption order then—

- (a) if it appears to the court that there are exceptional circumstances making it desirable that the child should be under the supervision of an independent person, the court may order that the child shall be under the supervision of a specified local authority or under the supervision of a probation officer ;
- (b) if it appears to the court that there are exceptional circumstances making it impracticable or undesirable for the child to be entrusted to either of the parents or to any other individual, the court may by order commit the child to the care of a specified local authority.

(2) Where the court makes an order under subsection (1)(b) the order may require the payment by either parent to the local authority, while it has the care of the child, of such weekly or other periodical sum towards the maintenance of the child as the court thinks reasonable.

1973 c. 29.

(3) Sections 3 and 4 of the Guardianship Act 1973 (which contain supplementary provisions relating to children who are subject to supervision, or in the care of local authorities, by virtue of orders made under section 2 of that Act) apply in relation to an order under this section as they apply in relation to an order under section 2 of that Act.

(4) In the application of this section to Scotland—

- (a) the words “or under the supervision of a probation officer” in subsection (1)(a) do not apply ;
- (b) subsection (3) does not apply ; and
- (c) subsections (2), (4) and (5) of section 11 of the Guardianship Act 1973 apply in relation to an order under this section as they apply in relation to an order under that section.

Need to
notify local
authority of
adoption
application.

18.—(1) An adoption order shall not be made in respect of a child who was not placed with the applicant by an adoption agency unless the applicant has, at least three months before the date of the order, given notice to the local authority within whose area he has his home of his intention to apply for the adoption order.

(2) On receipt of such a notice the local authority shall investigate the matter and submit to the court a report of their investigation.

(3) Under subsection (2), the local authority shall in particular investigate—

PART I

- (a) so far as is practicable, the suitability of the applicant, and any other matters relevant to the operation of section 3 in relation to the application ; and
- (b) whether the child was placed with the applicant in contravention of section 29 of the 1958 Act.

19.—(1) Where on an application for an adoption order the requirements of sections 12(1) and 18(1) are complied with the court may postpone the determination of the application and make an order vesting the legal custody of the child in the applicants for a probationary period not exceeding two years upon such terms for the maintenance of the child and otherwise as the court thinks fit.

Interim orders.

(2) Where the probationary period specified in an order under subsection (1) is less than two years, the court may by a further order extend the period to a duration not exceeding two years in all.

20.—(1) For the purpose of any application for an adoption order or an order under section 14, 16 or 25, rules shall provide for the appointment, in such cases as are prescribed,—

Guardian ad litem and reporting officer.

- (a) of a person to act as guardian ad litem of the child upon the hearing of the application, with the duty of safeguarding the interests of the child in the prescribed manner ;
- (b) of a person to act as reporting officer for the purpose of witnessing agreements to adoption and performing such other duties as the rules may prescribe.

(2) A person who is employed—

- (a) in the case of an application for an adoption order, by the adoption agency by whom the child was placed ;
or
- (b) in the case of an application under section 14 by the adoption agency by whom the application was made ;
or
- (c) in the case of an application under section 16 by the adoption agency with the parental rights and duties relating to the child,

shall not be appointed to act as guardian ad litem or reporting officer for the purposes of the application but, subject to that, the same person may if the court thinks fit be both guardian ad litem and reporting officer.

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(3) Rules may provide for the reporting officer to be appointed before the application is made.

(4) In relation to Scotland, references in this section to a guardian ad litem shall be construed as references to a curator ad litem.

Hearings of
applications
etc. in private.

21.—(1) Proceedings in the High Court under this Part may be disposed of in chambers.

(2) All proceedings in the county court under this Part shall be heard and determined in camera.

1952 c. 55.

(3) Proceedings in the magistrates' court under this Part shall be domestic proceedings for the purposes of the Magistrates' Courts Act 1952 but section 57(2)(d) of that Act shall not apply in relation to any proceedings under this Part.

(4) In relation to Scotland, all proceedings before the court under this Part shall be heard and determined in camera unless the court otherwise directs.

Making of
order.

22.—(1) In the case of—

(a) an application for an adoption order in relation to a child who is not free for adoption ;

(b) an application for an order under section 14,

rules shall require every person who can be found and whose agreement or consent to the making of the order is required to be given or dispensed with under this Act to be notified of a date and place where he may be heard on the application and of the fact that, unless he wishes or the court requires, he need not attend.

(2) In the case of an application under section 25 rules shall require every person who can be found, and whose agreement to the making of the order would be required if the application were for an adoption order (other than a Convention adoption order), to be notified as aforesaid.

(3) Where an application for an adoption order relates to a child placed by an adoption agency, the agency shall submit to the court a report on the suitability of the applicants and any other matters relevant to the operation of section 3, and shall assist the court in any manner the court may direct.

(4) The court shall not proceed to hear an application for an adoption order in relation to a child where a previous application for a British adoption order made in relation to the child by the same persons was refused by any court unless—

(a) in refusing the previous application the court directed that this subsection should not apply, or

(b) it appears to the court that because of a change in circumstances or for any other reason it is proper to proceed with the application.

(5) The court shall not make an adoption order in relation to a child unless it is satisfied that the applicants have not, as respects the child, contravened section 50 of the 1958 Act (prohibition of certain payments in relation to adoption).

(6) In the application of this section to Scotland for the reference to hearing an application in subsection (4) there shall be substituted a reference to determining an application.

23. On the joint application of an adoption agency in which the parental rights and duties relating to a child who is in Great Britain are vested under section 14(6) or this section and any other adoption agency, an authorised court may if it thinks fit by order transfer the parental rights and duties to the latter agency.

Transfer of parental rights and duties between adoption agencies.

24.—(1) An adoption order shall be made as a Convention adoption order if the application is for a Convention adoption order and the following conditions are satisfied both at the time of the application and when the order is made.

Convention adoption orders.

(2) The child—

- (a) must be a United Kingdom national or a national of a Convention country, and
- (b) must habitually reside in British territory or a Convention country, and
- (c) must not be, or have been, married.

(3) The applicant or applicants and the child must not all be United Kingdom nationals living in British territory.

(4) If the application is by a married couple, either—

- (a) each must be a United Kingdom national or a national of a Convention country, and both must habitually reside in Great Britain, or
- (b) both must be United Kingdom nationals, and each must habitually reside in British territory or a Convention country,

and if the applicants are nationals of the same Convention country the adoption must not be prohibited by a specified provision (as defined in subsection (8)) of the internal law of that country.

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(5) If the application is by one person, either—

- (a) he must be a United Kingdom national or a national of a Convention country, and must habitually reside in Great Britain, or
- (b) he must be a United Kingdom national, and must habitually reside in British territory or a Convention country,

and if he is a national of a Convention country the adoption must not be prohibited by a specified provision (as defined in subsection (8)) of the internal law of that country.

(6) If the child is not a United Kingdom national the order shall not be made—

- (a) except in accordance with the provisions, if any, relating to consents and consultations of the internal law relating to adoption of the Convention country of which the child is a national, and
- (b) unless the court is satisfied that each person who consents to the order in accordance with that internal law does so with full understanding of what is involved.

(7) The reference to consents and consultations in subsection (6) does not include a reference to consent by and consultation with the applicant and members of the applicant's family (including his or her spouse), and for the purposes of subsection (6) consents may be proved in the manner prescribed by rules and the court shall be treated as the authority by whom, under the law mentioned in subsection (6), consents may be dispensed with and the adoption in question may be effected; and where the provisions there mentioned require the attendance before that authority of any person who does not reside in Great Britain, that requirement shall be treated as satisfied for the purposes of subsection (6) if—

- (a) that person has been given a reasonable opportunity of communicating his opinion on the adoption in question to the proper officer or clerk of the court, or to an appropriate authority of the country in question, for transmission to the court; and
- (b) where he has availed himself of that opportunity, his opinion has been transmitted to the court.

(8) In subsections (4) and (5) "specified provision" means a provision specified in an order of the Secretary of State as one notified to the Government of the United Kingdom in pursuance of the provisions of the Convention which relate to prohibitions on an adoption contained in the national law of the Convention country in question.

(9) Sections 9 and 10(1) (ascertainment of nationality, and internal law of foreign country) of the Adoption Act 1968 shall apply with any necessary modifications for the purposes of this section as they apply for the purposes of that Act.

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1968 c. 53.

25.—(1) Where on an application made in relation to a child by a person who is not domiciled in England and Wales or Scotland an authorised court is satisfied that he intends to adopt the child under the law of or within the country in which the applicant is domiciled, the court may, subject to the following provisions of this section, make an order vesting in him the parental rights and duties relating to the child.

Adoption of children abroad.

(2) The provisions of this Part relating to adoption orders, except sections 8(1), (9) and (10), 10(2), 11(2), 14 to 16, 19, 22(1), 23 and 24, shall apply in relation to orders under this section as they apply in relation to adoption orders subject to the modification that in section 9(1) for “19” and “13” there are substituted “32” and “26” respectively.

(3) Sections 20 to 23 and 24(4) and (5) of the 1958 Act shall apply in relation to an order under this section as they apply in relation to an adoption order except that any entry in the Registers of Births, the Register of Births or the Adopted Children Register which is required to be marked in consequence of the making of an order under this section shall, in lieu of being marked with the word “Adopted” or “Re-adopted” (with or without the addition of the word “(Scotland)” or “(England)”) be marked with the words “Proposed Foreign Adoption” or “Proposed Foreign Re-adoption”, as the case may require.

(4) References in Parts III and IV of the 1958 Act to an adoption order include references to an order under this section, and references in this Act and in the 1958 Act to the placing of children for adoption or to the making of arrangements for adoption include references to the placing of children for adoption abroad or the making of arrangements for adoption abroad.

Amendments of Adoption Act 1958

26.—(1) In section 20 of the 1958 Act, in subsection (5), after the word “except” there are inserted the words “in accordance with section 20A of this Act or”.

Obtaining of birth certificate by adopted person.

(2) The following section is inserted in the 1958 Act after section 20:—

“Disclosure of birth records of adopted persons.

20A.—(1) Subject to subsections (4) and (6) of this section the Registrar General shall on an application made in the prescribed manner by an adopted person a record of whose birth is kept by the Registrar General and who has attained the age of 18 years

PART I

supply to that person on payment of the prescribed fee (if any) such information as is necessary to enable that person to obtain a certified copy of the record of his birth.

(2) On an application made in the prescribed manner by an adopted person under the age of 18 years a record of whose birth is kept by the Registrar General and who is intending to be married in England or Wales, and on payment of the prescribed fee (if any), the Registrar General shall inform the applicant whether or not it appears from information contained in the registers of live births or other records that the applicant and the person whom he intends to marry may be within the prohibited degrees of relationship for the purposes of the Marriage Act 1949.

(3) It shall be the duty of the Registrar General and each local authority and approved adoption society to provide counselling for adopted persons who apply for information under subsection (1) of this section.

(4) Before supplying any information to an applicant under subsection (1) of this section, the Registrar General shall inform the applicant that counselling services are available to him—

- (a) at the General Register Office ; or
- (b) from the local authority for the area where the applicant is at the time the application is made ; or
- (c) from the local authority for the area where the court sat which made the adoption order relating to the applicant ; or
- (d) if the applicant's adoption was arranged by an adoption society which is approved under section 4 of the Children Act 1975, from that society.

(5) If the applicant chooses to receive counselling from a local authority or an adoption society under subsection (4) the Registrar General shall send to the authority or society of the applicant's choice the information to which the applicant is entitled under subsection (1).

(6) The Registrar General shall not supply a person who was adopted before the date on which the Children Act 1975 was passed with any information

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under subsection (1) of this section unless that person has attended an interview with a counsellor either at the General Register Office or in pursuance of arrangements made by the local authority or adoption society from whom the applicant is entitled to receive counselling in accordance with subsection (4).

(7) In this section “prescribed” means prescribed by regulations made by the Registrar General.”.

27. In section 22 of the 1958 Act—

- (a) the following words are added at the end of subsection (4)—

“or a local authority or an approved adoption society which is providing counselling, under subsection (4A) of this section, for that adopted person.”;

- (b) the following subsections are inserted after subsection (4)—

“(4A) Where the Registrar General for Scotland furnishes an adopted person with information under subsection (4) of this section, he shall advise that person that counselling services are available—

- (a) from the local authority for the area where the adopted person lives ; or

- (b) if the adopted person’s adoption was arranged by an adoption society which is approved under section 4 of the Children Act 1975, from that society,

and it shall be the duty of such local authority and approved adoption society to provide counselling for adopted persons who have been furnished with information under subsection (4) and who apply to them for counselling in respect of that information.

(4B) Where an adopted person has arranged to receive counselling under subsection (4A), the Registrar General for Scotland shall, on receipt of a request from the local authority or adoption society which is providing that counselling, and on payment of the appropriate fee, send to the authority or society an extract of the entry relating to the adopted person in the Register of Births.”.

Counselling in Scotland for adopted person seeking information about his birth.

PART I

Restriction on
arranging
adoption and
placing of
children.

28. In section 29 of the 1958 Act—

- (a) the following subsection is substituted for subsections (1) and (2)—

“(1) A person other than an adoption agency shall not make arrangements for the adoption of a child, or place a child for adoption, unless—

(a) the proposed adopter is a relative of the child, or

(b) he is acting in pursuance of an order of the High Court”;

- (b) the following subsections are inserted after subsection (1)—

“(2) An adoption society approved under the Children Act 1975 only as respects England and Wales shall not act as an adoption society in Scotland, except to the extent that it considers it necessary to do so in the interests of a person mentioned in section 1(1) of that Act.

(2A) An adoption society approved under the Children Act 1975 only as respects Scotland shall not act as an adoption society in England or Wales, except to the extent that it considers it necessary to do so in the interests of a person mentioned in section 1(1) of that Act.”;

- (c) in subsection (3)—

(i) the following is inserted after paragraph (b)—
“or

(c) receives a child placed with him in contravention of subsection (1) of this section”;

(ii) for the words “six months” there are substituted the words “three months” and for the words “one hundred pounds” there are substituted the words “£400”;

- (d) the following subsection is substituted for subsection (5)—

“(5) Section 17 of the Children Act 1975 shall apply where a person is convicted of a contravention of subsection (1) of this section as it applies where an application for an adoption order is refused.”.

29. The following sections are substituted for section 34 of the 1958 Act—

“Restrictions
on removal
where
adoption
agreed or
application
made under
section 14
of Children
Act 1975.

34.—(1) While an application for an adoption order is pending in a case where a parent or guardian of the child has agreed to the making of the adoption order (whether or not he knows the identity of the applicant), the parent or guardian is not entitled, against the will of the person with whom the child has his home, to remove the child from the custody of that person except with the leave of the court.

Restrictions
on removal
of child
pending
adoption.

(2) While an application is pending for an order under section 14 of the Children Act 1975 and—

(a) the child is in the care of the adoption agency making the application, and

(b) the application was not made with the consent of each parent or guardian of the child, no parent or guardian of the child who did not consent to the application is entitled, against the will of the person with whom the child has his home, to remove the child from the custody of that person except with the leave of the court.

(3) Any person who contravenes subsection (1) or (2) of this section commits an offence and shall be liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding £400 or both.

34A.—(1) While an application for an adoption order in respect of a child made by the person with whom the child has had his home for the five years preceding the application is pending, no person is entitled, against the will of the applicant, to remove the child from the applicant's custody except with the leave of the court or under authority conferred by any enactment or on the arrest of the child.

(2) Where a person ("the prospective adopter") gives notice in writing to the local authority within whose area he has his home that he intends to apply for an adoption order in respect of a child who for the preceding five years has had his home with the prospective adopter, no person is entitled, against the will of the prospective adopter, to remove the child from the prospective adopter's custody, except with the leave of a court or under authority conferred by any enactment or on the arrest of the child, before—

(a) the prospective adopter applies for the adoption order, or

(b) the period of three months from the receipt of the notice by the local authority expires, whichever occurs first.

(3) In any case where subsection (1) or (2) of this section applies, and—

(a) the child was in the care of a local authority before he began to have his home with the applicant or, as the case may be, the prospective adopter, and

Restrictions
on removal
where
applicant
has provided
home for
five years.

PART I

(b) the child remains in the care of the authority,

the authority shall not remove the child from the actual custody of the applicant or of the prospective adopter except in accordance with sections 35 and 36 of this Act or with the leave of the court.

(4) A local authority which receives such notice as aforesaid in respect of a child whom the authority know to be in the care of another local authority or of a voluntary organisation shall, not more than seven days after the receipt of the notice, inform that other authority or the organisation in writing that they have received the notice.

(5) Subsection (2) of this section does not apply to any further notice served by the prospective adopter on any local authority in respect of the same child during the period referred to in paragraph (b) of that subsection or within 28 days after its expiry.

(6) Any person who contravenes subsection (1) or (2) of this section commits an offence and shall be liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding £400 or both.

(7) The Secretary of State may by order made by statutory instrument a draft of which has been approved by each House of Parliament amend subsection (1) or (2) of this section to substitute a different period for the period of five years mentioned in that subsection (or the period which, by a previous order under this subsection, was substituted for that period).

(8) In relation to Scotland, subsection (3) of this section does not apply where the removal of the child is authorised, in terms of Part III of the Social Work (Scotland) Act 1968, by a justice of the peace or a children's hearing."

Return of
child taken
away in
breach of
section 34
or 34A of
1958 Act.

30.—(1) An authorised court may on the application of a person from whose custody a child has been removed in breach of section 34 or 34A of the 1958 Act order the person who has so removed the child to return the child to the applicant.

(2) An authorised court may on the application of a person who has reasonable grounds for believing that another person is intending to remove a child from the applicant's custody in

breach of section 34 or 34A of the 1958 Act by order direct that other person not to remove the child from the applicant's custody in breach of the said section 34 or 34A.

(3) If, in the case of an order made by the High Court under subsection (1), the High Court or, in the case of an order made by a county court under subsection (1), a county court is satisfied that the child has not been returned to the applicant, the court may make an order authorising an officer of the court to search such premises as may be specified in the order for the child and, if the officer finds the child, to return the child to the applicant.

(4) If a justice of the peace is satisfied by information on oath that there are reasonable grounds for believing that a child to whom an order under subsection (1) relates is in premises specified in the information, he may issue a search warrant authorising a constable to search the premises for the child; and if a constable acting in pursuance of a warrant under this section finds the child, he shall return the child to the person on whose application the order under subsection (1) was made.

(5) An order under subsection (3) may be enforced in like manner as a warrant for committal.

(6) Subsections (3), (4) and (5) do not apply to Scotland.

31. In section 35 of the 1958 Act, the following subsection is inserted after subsection (5)—

Return of child on refusal of adoption order.

“(5A) Where an application for an adoption order is refused the court may, if it thinks fit, at any time before the expiry of the period of seven days mentioned in subsection (3) of this section order that period to be extended to a duration, not exceeding six weeks, specified in the order.”.

32. In section 50 (prohibition of certain payments in relation to adoption) of the 1958 Act, the following subsections are inserted at the end—

Payment of allowances to adopters.

“(4) If an adoption agency submits to the Secretary of State a scheme for the payment by the agency of allowances to persons who have adopted or intend to adopt a child where arrangements for the adoption were made, or are to be made, by that agency, and the Secretary of State approves the scheme, this section shall not apply to any payment made in accordance with the scheme.

(5) The Secretary of State, in the case of a scheme approved by him under subsection (4) of this section, may at any time—

(a) make, or approve the making by the agency of, alterations to the scheme;

(b) revoke the scheme.

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(6) The Secretary of State shall, within seven years of the date on which section 32 of the Children Act 1975 comes into force and, thereafter, every five years, publish a report on the operation of the schemes since that date or since the publication of the last report.

(7) Subject to the following subsection, subsection (4) of this section shall expire on the seventh anniversary of the date on which it comes into force.

(8) The Secretary of State may by order made by statutory instrument at any time before the said anniversary, repeal subsection (7) of this section.

(9) An order under subsection (8) of this section shall not be made unless—

(a) a report has been published under subsection (6) of this section, and

(b) a draft of the order has been laid before Parliament and approved by resolution of each House.

(10) Notwithstanding the expiry of subsection (4) of this section or the revocation of a scheme approved under this section, subsection (1) of this section shall not apply in relation to any payment made, whether before or after the expiry of subsection (4) or the revocation of the scheme, in accordance with a scheme which was approved under this section to a person to whom such payments were made, where the scheme was not revoked, before the expiry of subsection (4) or, if the scheme was revoked, before the date of its revocation.”

PART II

CUSTODY

Custodianship orders

Custodianship
orders.

33.—(1) An authorised court may on the application of one or more persons qualified under subsection (3) make an order vesting the legal custody of a child in the applicant or, as the case may be, in one or more of the applicants if the child is in England or Wales at the time the application is made.

(2) An order under subsection (1) may be referred to as a custodianship order, and the person in whom legal custody of the child is vested under the order may be referred to as the custodian of the child.

(3) The persons qualified to apply for a custodianship order are—

PART II

(a) a relative or step-parent of the child—

(i) who applies with the consent of a person having legal custody of the child, and

(ii) with whom the child has had his home for the three months preceding the making of the application ;

(b) any person—

(i) who applies with the consent of a person having legal custody of the child, and

(ii) with whom the child has had his home for a period or periods before the making of the application which amount to at least twelve months and include the three months preceding the making of the application ;

(c) any person with whom the child has had his home for a period or periods before the making of the application which amount to at least three years and include the three months preceding the making of the application.

(4) The mother or father of the child is not qualified under any paragraph of subsection (3).

(5) A step-parent of the child is not qualified under any paragraph of subsection (3) if in proceedings for divorce or nullity of marriage the child was named in an order made under paragraph (b) or (c) of section 41(1) (arrangements for welfare of children of family) of the Matrimonial Causes Act 1973 c. 18. 1973.

(6) If no person has legal custody of the child, or the applicant himself has legal custody or the person with legal custody cannot be found, paragraphs (a) and (b) of subsection (3) apply with the omission of sub-paragraph (i).

(7) The Secretary of State may by order a draft of which has been approved by each House of Parliament amend subsection (3)(c) to substitute a different period for the period of three years mentioned in that paragraph (or the period which, by a previous order under this subsection, was substituted for that period).

(8) Subsection (5) does not apply—

(a) if the parent other than the one the step-parent married is dead or cannot be found, or

(b) if the order referred to in subsection (5) was made under subsection (1)(c) of section 41 of the Matrimonial Causes Act 1973 and it has since been determined

PART II

that the child was not a child of the family to whom that section applied.

1971 c. 3.

(9) For the avoidance of doubt, it is hereby declared that the provisions of section 1 of the Guardianship of Minors Act 1971 apply to applications made under this Part of this Act.

(10) This section and sections 34 to 46 do not apply to Scotland.

Access and
maintenance.

34.—(1) An authorised court may, on making a custodianship order or while a custodianship order is in force, by order—

- (a) on the application of the child's mother or father, make such provision as it thinks fit requiring access to the child to be given to the applicant ;
- (b) on the application of the custodian, require the child's mother or father (or both) to make to the applicant such periodical payments towards the maintenance of the child as it thinks reasonable ;
- (c) on the application of the child's mother or father, revoke an order requiring the applicant to contribute towards the child's maintenance made (otherwise than under this section) by any court ;
- (d) on the application of the child's mother or father or the custodian, vary an order made (otherwise than under this section) by any court requiring the mother or father to contribute towards the child's maintenance—
 - (i) by altering the amount of the contributions ;
 - (ii) by substituting the custodian for the person to whom the contributions were ordered to be made.

1973 c. 18.

(2) References in subsection (1) to the child's mother or father include any person in relation to whom the child was treated as a child of the family (as defined in section 52(1) of the Matrimonial Causes Act 1973) but the court in deciding whether to make an order under subsection (1)(b) against a person who is not the child's mother or father shall have regard (among the circumstances of the case)—

- (a) to whether that person had assumed any responsibility for the child's maintenance and, if he did, to the extent to which and the basis on which he did so, and to the length of time during which he discharged that responsibility ;
- (b) to the liability of any other person to maintain that child.

(3) No order shall be made under subsection (1)(b) requiring the father of an illegitimate child to make any payments to the child's custodian.

(4) Subsections (2), (3), (4) and (6) (orders as to supervision, local authority care, maintenance etc. of children) of section 2 of the Guardianship Act 1973 and sections 3 and 4 of that Act 1973 c. 29. (supplementary provisions) shall apply to an application for a custodianship order as they apply to an application under 1971 c. 3. section 9 of the Guardianship of Minors Act 1971, subject to the following modifications, that is to say—

(a) in section 2(2)(b) and (4)(a) of the Guardianship Act 1973 any reference to a parent of the minor to whom the order relates shall be construed as including a reference to any other individual ;

(b) section 3(3) of that Act shall have effect as if the words “or the custodian” were inserted after the words “application of either parent”.

(5) A local authority may make contributions to a custodian towards the cost of the accommodation and maintenance of the child, except where the custodian is the husband or wife of a parent of the child.

35.—(1) An authorised court may by order revoke a Revocation and variation of orders. custodianship order on the application of—

(a) the custodian, or

(b) the mother or father, or a guardian, of the child, or

(c) any local authority in England or Wales.

(2) The court shall not proceed to hear an application made by any person for the revocation of a custodianship order where a previous such application made by the same person was refused by that or any other court unless—

(a) in refusing the previous application the court directed that this subsection should not apply, or

(b) it appears to the court that because of a change in circumstances or for any other reason it is proper to proceed with the application.

(3) The custodian of a child may apply to an authorised court for the revocation or variation of any order made under section 34 in respect of that child.

(4) Any other person on whose application an order under section 34 was made, or who was required by such an order to contribute towards the maintenance of the child, may apply to an authorised court for the revocation or variation of that order.

PART II

(5) Any order made under section 34 in respect of a child who is the subject of a custodianship order shall cease to have effect on the revocation of the custodianship order.

(6) A custodianship order made in respect of a child, and any order made under section 34 in respect of the child, shall cease to have effect when the child attains the age of 18 years.

Care etc. of
child on
revocation of
custodianship
order.

36.—(1) Before revoking a custodianship order the court shall ascertain who would have legal custody of the child, if, on the revocation of the custodianship order, no further order were made under this section.

(2) If the child would not be in the legal custody of any person, the court shall, if it revokes the custodianship order, commit the care of the child to a specified local authority.

(3) If there is a person who would have legal custody of the child on the revocation of the custodianship order, the court shall consider whether it is desirable in the interests of the welfare of the child for the child to be in the legal custody of that person and—

(a) if the court is of the opinion that it would not be so desirable, it shall on revoking the custodianship order commit the care of the child to a specified local authority ;

(b) if it is of the opinion that while it is desirable for the child to be in the legal custody of that person, it is also desirable in the interests of the welfare of the child for him to be under the supervision of an independent person, the court shall, on revoking the custodianship order, order that the child shall be under the supervision of a specified local authority or of a probation officer.

(4) Before exercising its functions under this section the court shall, unless it has sufficient information before it for the purpose, request—

(a) a local authority to arrange for an officer of the authority, or

(b) a probation officer,

to make to the court a report, orally or in writing, on the desirability of the child returning to the legal custody of any individual, and it shall be the duty of the local authority or probation officer to comply with the request.

(5) Where the court makes an order under subsection (3)(a) the order may require the payment by either parent to the local authority, while it has the care of the child, of such weekly or

other periodical sum towards the maintenance of the child as the court thinks reasonable. PART II

(6) Sections 3 and 4 of the Guardianship Act 1973 (which contain supplementary provisions relating to children who are subject to supervision, or in the care of local authority, by virtue of orders made under section 2 of that Act) apply in relation to an order under this section as they apply in relation to an order under section 2 of that Act. 1973 c. 29.

(7) Subsections (2) to (6) of section 6 of the Guardianship Act 1973 shall apply in relation to reports which are requested by magistrates' courts under this section as they apply to reports under subsection (1) of that section.

37.—(1) Where on an application for an adoption order by a relative of the child or by the husband or wife of the mother or father of the child, whether alone or jointly with his or her spouse, the requirements of section 12 or, where the application is for a Convention adoption order, section 24(6) are satisfied, but the court is satisfied— Custodianship order on application for adoption or guardianship.

(a) that the child's welfare would not be better safeguarded and promoted by the making of adoption order in favour of the applicant, than it would be by the making of a custodianship order in his favour, and

(b) that it would be appropriate to make a custodianship order in the applicant's favour,

the court shall direct the application to be treated as if it had been made by the applicant under section 33, but if the application was made jointly by the father or mother of the child and his or her spouse, the court shall direct the application to be treated as if made by the father's wife or the mother's husband alone.

(2) Where on an application for an adoption order made—

(a) by a person who is neither a relative of the child nor the husband or wife of the mother or father of the child; or

(b) by a married couple neither of whom falls within paragraph (a),

the said requirements are satisfied but the court is of opinion that it would be more appropriate to make a custodianship order in favour of the applicant, it may direct the application to be treated as if it had been made by the applicant under section 33.

(3) Where on an application under section 9 (orders for custody and maintenance on application of mother or father) of the Guardianship of Minors Act 1971 the court is of opinion 1971 c. 3.

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that legal custody should be given to a person other than the mother or father, it may direct the application to be treated as if it had been made by that person under section 33.

(4) Where a direction is given under this section the applicant shall be treated (if such is not the case) as if he were qualified to apply for a custodianship order and this Part, except section 40, shall have effect accordingly.

(5) Subsection (1) does not apply to an application made by a step-parent whether alone or jointly with another person in any case where the step-parent is prevented by section 33(5) from being qualified to apply for a custodianship order in respect of the child.

(6) Subsections (1) and (2) do not apply to an application for an adoption order made by the child's mother or father alone.

Disputes
between joint
custodians.

38. If two persons have a parental right or duty vested in them jointly by a custodianship order or by virtue of section 44(2) but cannot agree on its exercise or performance, either of them may apply to an authorised court, and the court may make such order regarding the exercise of the right or performance of the duty as it thinks fit.

Reports by
local
authorities
and probation
officers.

39.—(1) A court dealing with an application made under this Part, or an application which is treated as if made under section 33, may request—

(a) a local authority to arrange for an officer of the authority, or

(b) a probation officer,

to make to the court a report, orally or in writing, with respect to any specified matter which appears to the court to be relevant to the application, and it shall be the duty of the local authority or probation officer to comply with the request.

1973 c. 29.

(2) Subsections (2) to (6) of section 6 of the Guardianship Act 1973 shall apply in relation to reports which are requested by magistrates' courts under this section as they apply to reports under subsection (1) of that section.

Notice of
application
to be given
to local
authority.

40.—(1) A custodianship order shall not be made unless the applicant has given notice of the application for the order to the local authority in whose area the child resides within the seven days following the making of the application, or such extended period as the court or local authority may allow.

(2) On receipt of a notice given by the applicant under subsection (1) the local authority shall arrange for an officer of the authority to make a report to the court (so far as is practicable)

on the matters prescribed under subsection (3) and on any other matter which he considers to be relevant to the application.

(3) The Secretary of State shall by regulations prescribe matters which are to be included in a report under subsection (2) and, in particular, but without prejudice to the generality of the foregoing, the prescribed matters shall include—

(a) the wishes and feelings of the child having regard to his age and understanding and all other matters relevant to the operation of section 1 (principle on which questions relating to custody are to be decided) of the Guardianship of Minors Act 1971 in relation to the application;

1971 c. 3.

(b) the means and suitability of the applicant;

(c) information of a kind specified in the regulations relating to members of the applicant's household;

(d) the wishes regarding the application, and the means, of the mother and father of the child.

(4) Subsections (2), (3) and (3A) of section 6 of the Guardianship Act 1973 shall apply to a report under this section which is submitted to a magistrates' court.

1973 c. 29.

41.—(1) While an application for a custodianship order in respect of a child made by the person with whom the child has at the time the application is made had his home for a period (whether continuous or not) amounting to at least three years is pending, another person is not entitled, against the will of the applicant, to remove the child from the applicant's custody except with the leave of a court or under authority conferred by any enactment or on the arrest of the child.

Restriction on removal of child where applicant has provided home for three years.

(2) In any case where subsection (1) applies, and

(a) the child was in the care of a local authority before he began to have his home with the applicant, and

(b) the child remains in the care of a local authority,

the authority in whose care the child is shall not remove the child from the applicant's custody except with the applicant's consent or the leave of a court.

(3) Any person who contravenes subsection (1) commits an offence and shall be liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding £400 or both.

(4) The Secretary of State may by order a draft of which has been approved by each House of Parliament amend subsection

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(1) to substitute a different period for the period mentioned in that subsection (or the period which, by a previous order under this subsection, was substituted for that period).

Return of
child taken
away in
breach of
section 41.

42.—(1) An authorised court may on the application of a person from whose custody a child has been removed in breach of section 41 order the person who has so removed the child to return the child to the applicant.

(2) An authorised court may on the application of a person who has reasonable grounds for believing that another person is intending to remove a child from the applicant's custody in breach of section 41 by order direct that other person not to remove the child from the applicant's custody in breach of that section.

(3) If, in the case of an order made by the High Court under subsection (1), the High Court or, in the case of an order made by a county court under subsection (1), a county court is satisfied that the child has not been returned to the applicant, the court may make an order authorising an officer of the court to search such premises as may be specified in the order for the child and, if the officer finds the child, to return the child to the applicant.

(4) If a justice of the peace is satisfied by information on oath that there are reasonable grounds for believing that a child to whom an order under subsection (1) relates is in premises specified in the information, he may issue a search warrant authorising a constable to search the premises for the child; and if a constable acting in pursuance of a warrant under this section finds the child, he shall return the child to the person on whose application the order under subsection (1) was made.

(5) An order under subsection (3) may be enforced in like manner as a warrant for committal.

Enforcement
of orders
made by
magistrates'
courts.

1952 c. 55.

43.—(1) If at a time when the custodian is entitled to actual custody of the child by virtue of a custodianship order made by a magistrates' court any other person has actual custody of him, a copy of the custodianship order may be served on that person and thereupon the order may, without prejudice to any other remedy open to the custodian, be enforced under section 54(3) of the Magistrates' Courts Act 1952 as if it were an order of a magistrates' court requiring that person to give up the child to the custodian.

(2) Any person for the time being under an obligation to make payments in pursuance of any order for the payment of money made by a magistrates' court under section 34 shall give notice of any change of address to such person (if any) as may be specified in the order; and if he fails without reasonable excuse

to give such a notice he commits an offence and shall be liable on summary conviction to a fine not exceeding £10.

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(3) An order for the payment of money made by a magistrates' court under section 34 may be enforced in like manner as an affiliation order, and the enactments relating to affiliation orders shall apply accordingly with the necessary modifications.

44.—(1) While a custodianship order has effect in relation to a child the right of any person other than the custodian to legal custody of the child is suspended, but, subject to any further order made by any court, revives on the revocation of the custodianship order.

Effect of custodianship order on existing custody.

(2) Subsection (1) does not apply where the person already having custody is a parent of the child and the person who becomes custodian under the order is the husband or wife of the parent; and in such a case the spouses have the legal custody jointly.

45.—(1) Where a custodianship order subsists in respect of an illegitimate child, and no affiliation order relating to the child has been made under the Affiliation Proceedings Act 1957, the custodian of the child may apply to a justice of the peace acting for the petty sessions area in which the child or the child's mother resides for a summons to be served under section 1 of that Act.

Affiliation order on application by custodian. 1957 c. 55.

(2) The court shall proceed on the application as on a complaint under that section, but the person entitled to any payments under an affiliation order made on the application shall be the custodian.

(3) An application may not be made under subsection (1)—
(a) if the custodian is married to the child's mother, or
(b) more than three years after the custodianship order was made.

46.—(1) It is hereby declared that any jurisdiction conferred on a magistrates' court by virtue of this Part is exercisable notwithstanding that the proceedings are brought by or against a person residing outside England and Wales.

Procedure in magistrates' courts.

(2) A magistrates' court may, subject to subsection (3), proceed on an application for an order under this Part notwithstanding that the defendant has not been served with the summons, and rules may prescribe matters as to which the court is to be satisfied before proceeding in such a case.

(3) A magistrates' court shall not—

(a) make an order under this Part requiring a person to make payments towards the maintenance of a child, or

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(b) vary an order under this Part so as to increase a person's liability to make payments towards the maintenance of a child,

unless the person has been served with the summons.

1952 c. 55. (4) Rules may make provision as to the persons who are to be made defendants to a complaint for an order under this Part, and where there are two or more defendants to such a complaint the power of the court under section 55(1) of the Magistrates' Courts Act 1952 (power to award costs etc.) shall be deemed to include power, whatever adjudication the court makes, to order any of the parties to pay the whole or part of the costs of all or any of the parties.

1949 c. 101. (5) In this section, "rules" means rules made under section 15 of the Justices of the Peace Act 1949.

Custody in Scotland

Granting of custody.

47.—(1) Without prejudice to any existing enactment or rule of law conferring a—

(a) right to apply for custody of a child ;

(b) power to grant custody of a child ;

any relative, step-parent or foster parent of the child is qualified to apply for, and subject to subsection (2) may be granted, such custody in the same manner as any person so qualified before the commencement of this Act.

1930 c. 33. (2) Except in the case of an application under section 2 of the Illegitimate Children (Scotland) Act 1930, custody of a child shall not be granted in any proceedings to a person other than a parent or guardian of the child unless that person—

(a) being a relative or step-parent of the child, has the consent of a parent or guardian of the child and has had care and possession of the child for the three months preceding the making of the application for custody ; or

(b) has the consent of a parent or guardian of the child and has had care and possession of the child for a period or periods, before such application, which amounted to at least twelve months and included the three months preceding such application ; or

(c) has had care and possession of the child for a period or periods before such application which amounted to at least three years and included the three months preceding such application ; or

(d) while not falling within paragraph (a), (b) or (c), can show cause, having regard to section 1 of the Guardianship of Infants Act 1925 (the principle on which

1925 c. 45.

questions relating to custody, upbringing etc. of children are to be decided) why an order should be made awarding him custody of the child.

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(3) Nothing in this section shall prejudice any ancillary power of the court in any proceedings relative to custody.

(4) The Secretary of State may by order a draft of which has been approved by each House of Parliament amend subsection (2)(c) to substitute a different period for the period of three years mentioned in that paragraph (or the period which by a previous order under this subsection was substituted for that period).

(5) In relation to a grant of custody to which this section applies,

(a) "guardian" has the same meaning as in the 1958 Act ;

(b) "foster parent" means a person who, at the commencement of the proceedings in which the grant is made, has had care and possession of the child for a period or periods amounting to at least twelve months, whether or not that person continues to have care and possession of the child ;

(c) "relative" has the same meaning as in the 1958 Act, except that, where the child is illegitimate, "relative" does not include the father of the child.

(6) The form and manner of any consent required in terms of subsection (2)(a) or (b) may be prescribed by act of sederunt.

48.—(1) A person making an application relating to the custody of a child shall, so far as practicable and in such manner as may be prescribed by act of sederunt, give notice of that application to each known parent of the child, and for this purpose the father of an illegitimate child shall be regarded as a parent of the child. Miscellaneous provisions relative to custody.

(2) Any order made by virtue of this Part of this Act may be varied or discharged by a subsequent order, either by the Court *ex proprio motu* or on the application of any person concerned.

(3) In section 11(1) of the Guardianship Act 1973, for the words from "Where an application" to "relates to the custody of a child" there is substituted "Where an application relating to the custody of a child, other than an application to which Part II of the Matrimonial Proceedings (Children) Act 1958 applies, is made to a court". 1973 c. 29. 1958 c. 40.

(4) In section 12(2)(a) of the Guardianship Act 1973, for the words from "Where an application" to "by virtue of section 11 of this Act" there is substituted "Where any application, other than one to which Part II of the Matrimonial Proceedings

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(Children) Act 1958 applies, is made to a court for custody of a child or for the variation or discharge of any order (including an order made by virtue of section 11 above) relating to the custody of a child ”.

Notice to
local
authority of
certain
custody
applications.

49.—(1) Where an applicant for custody of a child is a relative, step-parent or foster parent of the child, an order awarding custody to that applicant shall not except on cause shown be made unless the applicant—

(a) in any case where at the time of the application he resided in Scotland, has, within the seven days following the making of the application, given notice thereof to the local authority within whose area he resided at that time ;

(b) in any other case, has within such time as the court may direct given, to such local authority in Scotland as the court may specify, notice of the making of the application.

(2) On receipt of a notice under subsection (1) the local authority shall investigate and report to the court on all the circumstances of the child and on the proposed arrangements for the care and upbringing of the child.

1973 c. 29.

(3) Paragraphs (b) and (c) of subsection (2) of section 12 of the Guardianship Act 1973 shall apply in relation to an investigation and report in terms of this section as they apply in relation to an investigation and report in terms of paragraph (a) of subsection (2) of that section.

Payments
towards
maintenance
of children.

50. Without prejudice to any existing powers and duties to make payments in respect of the maintenance of children, where custody of a child has been awarded to a person other than a parent of the child any local authority may make to that person payments for or towards the maintenance of the child.

Restriction on
removal of
child where
applicant has
provided
home for
three years.

51.—(1) Where a person has applied for custody of a child, it shall be an offence, except with the authority of a court or under authority conferred by any enactment or on the arrest of the child, to remove the child from the custody of the applicant against the will of the applicant if—

(a) the child has been in the care and possession of that person for a period or periods before the making of the application which amount to at least three years ;
and

(b) the application is pending in any court.

(2) In any case where subsection (1) applies, and

(a) the child was in the care of a local authority before he began to have his home with the applicant, and

(b) the child remains in the care of a local authority,

the authority in whose care the child is shall not remove the child from the applicant's custody except—

(i) with the applicant's consent ;

(ii) with the leave of a court ; or

(iii) with the authority, in terms of Part III of the Social Work (Scotland) Act 1968, of a justice of the peace or a children's hearing. 1968 c. 49.

(3) Any person who contravenes the provisions of subsection (1) commits an offence and shall be liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding £400 or both.

(4) The Secretary of State may by order, a draft of which has been approved by each House of Parliament, amend subsection (1) to substitute a different period for the period mentioned in that subsection (or for the period which, by a previous order under this subsection, was substituted for that period).

52. A court in which an application for custody of a child is pending may— Return of child taken away in breach of section 51.

(a) on the application of a person from whose custody the child has been removed in breach of section 51, order the person who has so removed the child to return the child to the applicant ;

(b) on the application of a person who has reasonable grounds for believing that another person is intending to remove the child from the applicant's custody in breach of section 51, by order direct that other person not to remove the child from the applicant's custody in breach of that section.

53.—(1) Without prejudice to the provisions of section 19 (power to make an interim order giving custody), where on an application for an adoption order in respect of a child the applicant is a person qualified to apply for custody of the child, and the court is of opinion— Custody order on application for adoption in Scotland.

(a) in the case of an applicant who is a relative of the child or a husband or wife of the mother or father of the child (whether applying alone or jointly with his or her spouse)—

(i) that the child's welfare would not be better safeguarded and promoted by the making of an adoption

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order in favour of the applicant than it would be by the making of a custody order in his favour ; and

(ii) that it would be appropriate to make a custody order in favour of the applicant ; or

(b) in any other case, that the making of a custody order in favour of the applicant would be more appropriate than the making of an adoption order in his favour,

the court shall direct that the application is to be treated as if it had been made for custody of the child ; but where such a direction is made the court shall not cease to have jurisdiction by reason only that it would not have had jurisdiction to hear an application by the applicant for custody of the child.

(2) In the application of this Part of this Act to any case where a direction under subsection (1) has been made—

(a) for references in section 47(2) to the making of an application for custody there shall be substituted references to the making of an application for an adoption order ;

(b) for the references in section 49 and paragraph (a) of subsection (1) of section 51 to the making of an application there shall be substituted references to the making of a direction in terms of subsection (1) of this section ;

(c) in section 51(1) for the words “ for custody of ” there shall be substituted the words “ for an adoption order in respect of ”.

1973 c. 29.

(3) For the purposes of section 11 of the Guardianship Act 1973, any application in respect of which a direction has been made under subsection (1) of this section, is an application for custody of a child.

Jurisdiction of
Scottish
courts in
certain
applications
for custody.

54.—(1) Without prejudice to any existing grounds of jurisdiction, the court shall have jurisdiction in proceedings for custody of a child if at the time of application for such custody—

(a) the child resides in Scotland ; and

(b) the child is domiciled in England and Wales ; and

(c) the person applying for custody is a person qualified, in terms of subsections (3) to (8) of section 33 of this Act, to apply in England or Wales for a custodianship order in respect of the child.

(2) For the purposes of this section, “ the court ” means—

(a) the Court of Session ; or

(b) the sheriff court of the sheriffdom within which the child resides.

- 55.—(1) In sections 47 to 54 “child” means a person under the age of sixteen.
- (2) Sections 47 to 54 and this section apply to Scotland only.
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Interpretation
and extent
of sections
47 to 55.

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CARE

Children in care of local authorities

- 56.—(1) In section 1 of the Children Act 1948, the following subsections are inserted after subsection (3)—
- Restriction on
removal of
child from
care.
1948 c. 43.

“(3A) Except in relation to an act done—

(a) with the consent of the local authority, or

(b) by a parent or guardian of the child who has given the local authority not less than 28 days’ notice of his intention to do it,

subsection (8) (penalty for taking away a child in care) of section 3 of this Act shall apply to a child in the care of a local authority under this section (notwithstanding that no resolution is in force under section 2 of this Act with respect to the child) if he has been in the care of that local authority throughout the preceding six months; and for the purposes of the application of paragraph (b) of that subsection in such a case a parent or guardian of the child shall not be taken to have lawful authority to take him away.

(3B) The Secretary of State may by order a draft of which has been approved by each House of Parliament amend subsection (3A) of this section by substituting a different period for the period of 28 days or of six months mentioned in that subsection (or the period which, by a previous order under this subsection, was substituted for that period).”

- (2) The following section is inserted after section 33 of the Children Act 1948—

“Restriction
on removal
of child
from care of
voluntary
organisa-
tion.

33A.—(1) Section 3(8) of this Act shall apply in relation to children who are not in the care of local authorities under section 1 of this Act but who are in voluntary homes or are boarded out, as it applies by virtue of subsection (3A) of the said section 1 to children in the care of the local authority, except that in the case of a child who is not in the care of a local authority the references in subsection (3A) to a local authority shall be construed as references

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to the voluntary organisation in whose care the child is.

(2) For the purposes of this section—

- (a) a child is boarded out if he is boarded out, by the voluntary organisation in whose care he is, with foster parents to live in their home as a member of their family ;
- (b) “voluntary home” includes a controlled community home and an assisted community home.”.

Substitution
of s. 2 of
Children Act
1948.
1948 c. 43.

57. The following section is substituted for section 2 of the Children Act 1948.

“ Assump-
tion by local
authority
of parental
rights and
duties.

2.—(1) Subject to the provisions of this Part of this Act, if it appears to a local authority in relation to any child who is in their care under the foregoing section—

(a) that his parents are dead and he has no guardian or custodian ; or

(b) that a parent of his—

(i) has abandoned him, or

(ii) suffers from some permanent disability rendering him incapable of caring for the child, or

(iii) while not falling within sub-paragraph (ii) of this paragraph, suffers from a mental disorder (within the meaning of the Mental Health Act 1959), which renders him unfit to have the care of the child, or

(iv) is of such habits or mode of life as to be unfit to have the care of the child, or

(v) has so consistently failed without reasonable cause to discharge the obligations of a parent as to be unfit to have the care of the child ; or

(c) that a resolution under paragraph (b) of this subsection is in force in relation to one parent of the child who is, or is likely to become, a member of the household comprising the child and his other parent ; or

(d) that throughout the three years preceding the passing of the resolution the child has

1959 c. 72.

been in the care of a local authority under the foregoing section, or partly in the care of a local authority and partly in the care of a voluntary organisation,

the local authority may resolve that there shall vest in them the parental rights and duties with respect to that child, and, if the rights and duties were vested in the parent on whose account the resolution was passed jointly with another person, they shall also be vested in the local authority jointly with that other person.

(2) In the case of a resolution passed under paragraph (b), (c) or (d) of subsection (1) of this section, unless the person whose parental rights and duties have under the resolution vested in the local authority has consented in writing to the passing of the resolution, the local authority, if that person's whereabouts are known to them, shall forthwith after the passing of the resolution serve on him notice in writing of the passing thereof.

(3) Every notice served by a local authority under subsection (2) of this section shall inform the person on whom the notice is served of his right to object to the resolution and the effect of any objection made by him.

(4) If, not later than one month after notice is served on a person under subsection (2) of this section, he serves a counter-notice in writing on the local authority objecting to the resolution, the resolution shall, subject to the provisions of subsection (5) of this section, lapse on the expiry of fourteen days from the service of the counter-notice.

(5) Where a counter-notice has been served on a local authority under subsection (4) of this section, the authority may not later than fourteen days after the receipt by them of the counter-notice complain to a juvenile court having jurisdiction in the area of the authority, and in that event the resolution shall not lapse until the determination of the complaint; and the court may on the hearing of the complaint order that the resolution shall not lapse by reason of the service of the counter-notice:

Provided that the court shall not so order unless satisfied—

- (a) that the grounds mentioned in subsection (1) of this section on which the local authority

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purported to pass the resolution were made out, and

(b) that at the time of the hearing there continued to be grounds on which a resolution under subsection (1) of this section could be founded, and

(c) that it is in the interests of the child to do so.

(6) While a resolution passed under subsection (1)(b), (c) or (d) of this section is in force with respect to a child, section 1(3) of this Act shall not apply in relation to the person who, but for the resolution, would have the parental rights and duties in relation to the child.

(7) Any notice under this section (including a counter-notice) may be served by post, so however that a notice served by a local authority under subsection (2) of this section shall not be duly served by post unless it is sent by registered post or recorded delivery service.

(8) A resolution under this section shall cease to have effect if—

(a) the child is adopted ;

(b) an order in respect of the child is made under section 14 or 25 of the Children Act 1975 ; or

(c) a guardian of the child is appointed under section 5 of the Guardianship of Minors Act 1971.

(9) Where, after a child has been received into the care of a local authority under the foregoing section, the whereabouts of any parent of his have remained unknown for twelve months, then, for the purposes of this section, the parent shall be deemed to have abandoned the child.

(10) The Secretary of State may by order a draft of which has been approved by each House of Parliament amend subsection (1)(d) of this section to substitute a different period for the period mentioned in that paragraph (or the period which, by a previous order under this subsection, was substituted for that period).

(11) In this section—

“ parent ”, except in subsection (1)(a), includes a guardian or custodian ;

“parental rights and duties”, in relation to a particular child, means all rights and duties which by law the mother and father have in relation to a legitimate child and his property except the right to consent or refuse to consent to the making of an application under section 14 of the Children Act 1975 and the right to agree or refuse to agree to the making of an adoption order or an order under section 25 of that Act.”.

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58. In the Children Act 1948, the following sections are inserted after section 4—

“Appeal to High Court.

4A. An appeal shall lie to the High Court from the making by a juvenile court of an order under section 2(5) or section 4(3) of this Act (orders confirming or terminating local authority resolutions under section 2(1) of this Act), or from the refusal by a juvenile court to make such an order.

Supplementary provisions relating to care proceedings.
1948 c. 43.

Guardians ad litem and reports in care proceedings.

4B.—(1) In any proceedings under section 2(5) or 4(3) or 4A of this Act, a juvenile court or the High Court may, where it considers it necessary in order to safeguard the interests of the child to whom the proceedings relate, by order make the child a party to the proceedings and appoint, subject to rules of court, a guardian ad litem of the child for the purposes of the proceedings.

(2) A guardian ad litem appointed in pursuance of this section shall be under a duty to safeguard the interests of the child in the manner prescribed by rules of court.

(3) Section 6 of the Guardianship Act 1973 shall apply in relation to complaints under section 2(5) or 4(3) of this Act as it applies in relation to applications under section 3(3) of the said Act of 1973.”.

1973 c. 29.

59. In section 12 of the Children Act 1948, the following subsections are substituted for subsection (1)—

“(1) In reaching any decision relating to a child in their care, a local authority shall give first consideration to the need to safeguard and promote the welfare of the child throughout his childhood; and shall so far as practicable ascertain the wishes and feelings of the child regarding the decision and give due consideration to them, having regard to his age and understanding.

General duty of local authority in care cases.

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(1A) If it appears to the local authority that it is necessary, for the purpose of protecting members of the public, to exercise their powers in relation to a particular child in their care in a manner which may not be consistent with their duty under the foregoing subsection, the authority may, notwithstanding that duty, act in that manner.”.

Children in care of voluntary organisations in England and Wales

Transfer of parental rights and duties to voluntary organisations.

1948 c. 43.

60.—(1) Where it appears to a local authority as respects a child in the care of a voluntary organisation which is an incorporated body—

- (a) that the child is not in the care of any local authority ; and
- (b) that a condition specified in section 2(1) of the Children Act 1948 is satisfied ; and
- (c) that it is necessary in the interests of the welfare of the child for the parental rights and duties to be vested in the organisation,

the authority may, subject to subsections (5) and (6), resolve that there shall vest in the organisation the parental rights and duties with respect to that child.

(2) While a resolution under this section is in force the parental rights and duties shall vest in the organisation in whose care the child is when the resolution is passed.

(3) If, immediately before the resolution is passed, the parental rights and duties are vested in the parent in relation to whom the resolution is passed jointly with any other person, then on the passing of the resolution the parental rights and duties shall vest jointly in that other person and the organisation in whose care the child is.

(4) In determining, for the purposes of subsection (1) of this section, whether the condition specified in section 2(1)(b)(i) of the Children Act 1948 is satisfied, if the whereabouts of any parent of the child have remained unknown for twelve months, that parent shall be deemed to have abandoned the child.

(5) A resolution under subsection (1) may not be passed by a local authority in respect of any child unless—

- (a) the child is living in the area of the authority either in a voluntary home or with foster parents with whom he has been boarded by the organisation in whose care he is ; and
- (b) that organisation has requested the authority to pass the resolution.

(6) The parental rights and duties which may vest in an organisation by virtue of this section do not include the right to consent or refuse to consent to the making of an application under section 14 and the right to agree or refuse to agree to the making of an adoption order or an order under section 25; and regulations made under section 33(1) of the Children Act 1948 shall apply to the emigration of a child notwithstanding that the parental rights and duties relating to the child are vested in the voluntary organisation. 1948 c. 43.

(7) Subsection (8) of section 2 of the Children Act 1948 shall apply in relation to a resolution under subsection (1) as if it were a resolution under the said section 2.

61.—(1) If it appears to a local authority, having regard to the interests of the welfare of a child living within their area, the parental rights and duties with respect to whom are by virtue of a resolution under section 60 vested in a voluntary organisation, that it is necessary that the parental rights and duties should no longer be vested in the organisation, the local authority shall resolve that there shall vest in them the parental rights and duties relating to the child. Duty of local authority to assume parental rights and duties.

(2) The local authority shall within seven days of passing a resolution under subsection (1) by notice in writing inform the organisation and each parent, guardian or custodian of the child whose whereabouts are known to them that the resolution has been passed.

62.—(1) A resolution under subsection (1) of section 60 shall cease to have effect on the passing of a resolution under subsection (1) of section 61. Effect of resolutions under sections 60 and 61.

(2) Section 6 of the Children Act 1948 shall have effect in relation to a resolution under subsection (1) of section 60 as it has effect in relation to a resolution under section 2 of that Act.

(3) A resolution under subsection (1) of section 61 shall be deemed to be a resolution under section 2 of the Children Act 1948 except that sections 2(2) to (7) and 4(3) of that Act shall not apply.

63.—(1) Subsections (2) to (5) and (7) of section 2 of the Children Act 1948 shall apply to a resolution under section 60 as they apply to a resolution under the said section 2, with the substitution for the reference in subsection (2) to the vesting of parental rights and duties in the local authority of a reference to the vesting of parental rights and duties in the voluntary organisation. Appeals by parents etc.

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(2) An appeal may be made—

- (a) where the complaint relates to a resolution under section 60, by a person deprived of parental rights and duties by the resolution, or
- (b) where the complaint relates to a resolution under section 61, by a person who but for that resolution and an earlier resolution under section 60 would have parental rights and duties,

to a juvenile court having jurisdiction in the area of the authority which passed the resolution, on the ground that—

- (i) there was no ground for the making of the resolution, or
- (ii) that the resolution should in the interests of the child be determined.

(3) An appeal shall lie to the High Court against the decision of a juvenile court under this section.

1948 c. 43.

(4) Section 4B of the Children Act 1948 shall apply in relation to proceedings under this section.

Conflict of interest between parent and child

Addition of new sections to Children and Young Persons Act 1969.

1969 c. 54.

64. The following heading and sections are inserted after section 32 of the Children and Young Persons Act 1969—

“Conflict of interest between parent and child or young person

Conflict of interest between parent and child or young person.

32A.—(1) If before or in the course of proceedings in respect of a child or young person—

- (a) in pursuance of section 1 of this Act, or
- (b) on an application under section 15(1) of this Act for the discharge of a relevant supervision order or a supervision order made under section 21(2) of this Act on the discharge of a relevant care order ; or
- (c) on an application under section 21(2) of this Act for the discharge of a relevant care order or a care order made under section 15(1) of this Act on the discharge of a relevant supervision order ; or
- (d) on an appeal to the Crown Court under section 2(12) of this Act, or
- (e) on an appeal to the Crown Court under section 16(8) of this Act against the dismissal of an application for the discharge of a relevant supervision order or against a

care order made under section 15(1) on the discharge of—

- (i) a relevant supervision order ; or
 - (ii) a supervision order made under section 21(2) on the discharge of a relevant care order ; or
- (f) on an appeal to the Crown Court under section 21(4) of this Act against the dismissal of an application for the discharge of a relevant care order or against a supervision order made under section 21(2) on the discharge of—
- (i) a relevant care order ; or
 - (ii) a care order made under section 15(1) on the discharge of a relevant supervision order,

it appears to the court that there is or may be a conflict, on any matter relevant to the proceedings, between the interests of the child or young person and those of his parent or guardian, the court may order that in relation to the proceedings the parent or guardian is not to be treated as representing the child or young person or as otherwise authorised to act on his behalf.

(2) If an application such as is referred to in subsection (1)(b) or (c) of this section is unopposed, the court, unless satisfied that to do so is not necessary for safeguarding the interests of the child or young person, shall order that in relation to proceedings on the application no parent or guardian of his shall be treated as representing him or as otherwise authorised to act on his behalf; but where the application was made by a parent or guardian on his behalf the order shall not invalidate the application.

(3) Where an order is made under subsection (1) or (2) of this section for the purposes of proceedings on an application within subsection (1)(a), (b) or (c) of this section, that order shall also have effect for the purposes of any appeal to the Crown Court arising out of those proceedings.

(4) The power of the court to make orders for the purposes of an application within subsection (1)(a), (b) or (c) of this section shall also be exercised

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able, before the hearing of the application, by a single justice.

(5) In this section—

“relevant care order” means a care order made under section 1 of this Act;

“relevant supervision order” means a supervision order made under section 1 of this Act.

Safeguarding of interests of child or young person where section 32A order made.

32B.—(1) Where the court makes an order under section 32A(2) of this Act the court, unless satisfied that to do so is not necessary for safeguarding the interests of the child or young person, shall in accordance with rules of court appoint a guardian ad litem of the child or young person for the purposes of the proceedings.

In this subsection “court” includes a single justice.

(2) Rules of court shall provide for the appointment of a guardian ad litem of the child or young person for the purposes of any proceedings to which an order under section 32A(1) of this Act relates.

(3) A guardian ad litem appointed in pursuance of this section shall be under a duty to safeguard the interests of the child or young person in the manner prescribed by rules of court.”.

Legal aid for parents where order made under new s. 32A of 1969 Act.
1974 c. 4.

65. In section 28 (power to order legal aid to be given) of the Legal Aid Act 1974—

(a) in subsection (1), for “subsections (3) and (6)” there is substituted “subsections (3), (6) and (6A)”, and

(b) the following subsection is inserted after subsection (6)—

“(6A) Where a court makes an order under section 32A of the Children and Young Persons Act 1969 affecting the parent or guardian of a person in relation to any proceedings, it may order that the parent or guardian shall be given legal aid for the purpose of taking such part in the proceedings as may be allowed by rules of court.

In this subsection “guardian” has the same meaning as in the Children and Young Persons Act 1933.”.

66. In the Social Work (Scotland) Act 1968 the following section is inserted after section 34—

“Safeguarding of interests of children before children’s hearings etc.

34A.—(1) In any proceedings—

- (a) before a children’s hearing ;
- (b) before the sheriff on an application under section 42(2)(c) of this Act ;
- (c) before the sheriff on an appeal under section 49 or 51 of this Act,

the chairman (in the case of proceedings referred to in paragraph (a) above) or the sheriff (in any other case)—

- (i) shall consider whether it is necessary for the purpose of safeguarding the interests of the child in the proceedings, because there is or may be a conflict, on any matter relevant to the proceedings, between the interests of the child and those of his parent, to appoint a person to act for that purpose ; and
- (ii) without prejudice to any existing power to appoint a person to represent the interests of the child, may, if he thinks fit, appoint a person to act for the purpose specified in paragraph (i) above.

(2) The power to make rules under—

- (a) section 35(4) of this Act,
- (b) section 32 of the Sheriff Courts (Scotland) Act 1971,

shall include power to make rules providing for—

- (i) the procedure in relation to the disposal of matters arising under this section ;
- (ii) appointment under subsection (1) of this section, the functions of a person so appointed and any right of such a person to information relating to the proceedings in question.

(3) The expenses of a person appointed under subsection (1) of this section shall—

- (a) in so far as reasonably incurred by him in safeguarding the interests of the child in the proceedings, and

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Safeguarding of interests of children before children’s hearings etc. in Scotland. 1968 c. 49.

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- (b) except in so far as otherwise defrayed in terms of regulations made under section 103(2) of the Children Act 1975,

be borne by the local authority for whose area the children's panel from which the relevant children's hearing has been constituted is formed.

(4) For the purposes of subsection (3) of this section, "relevant children's hearing" means—

- (a) in the case of proceedings referred to in subsection (1)(a) of this section, the children's hearing ;
- (b) in the case of proceedings referred to in subsection (1)(b) of this section, the children's hearing who have directed the application ;
- (c) in the case of proceedings referred to in subsection (1)(c) of this section, the children's hearing whose decision is being appealed against."

Absence from care and children in need of secure accommodation

Recovery of
children in care
of local
authorities.
1948 c. 43.

67.—(1) This section applies to a child—

- (a) who is in the care of a local authority under section 1 of the Children Act 1948 ; and
- (b) with respect to whom there is in force a resolution under section 2 of that Act ; and
- (c) who—

(i) has run away from accommodation provided for him by the local authority under Part II of the said Act ; or

(ii) has been taken away from such accommodation contrary to section 3(8) of the said Act ; or

(iii) has not been returned to the local authority as required by a notice served under section 49 of the Children and Young Persons Act 1963 on a person under whose charge and control the child was, in accordance with section 13(2) of the said Act of 1948, allowed to be.

1963 c. 37.

(2) If a justice of the peace is satisfied by information on oath that there are reasonable grounds for believing that a person specified in the information can produce the child to whom this section applies, he may issue a summons directed to the person so specified and requiring him to attend and produce the child

before a magistrates' court acting for the same petty sessions area as the justice. PART III

(3) Without prejudice to the powers under subsection (2) above, if a justice of the peace is satisfied by information on oath that there are reasonable grounds for believing that a child to whom this section applies is in premises specified in the information, he may issue a search warrant authorising a person named in the warrant, being an officer of the local authority in whose care the child is, to search the premises for the child; and if the child is found, he shall be placed in such accommodation as the local authority may provide for him under Part II of the Children Act 1948.

1948 c. 43.

(4) A person who, without reasonable excuse, fails to comply with a summons under subsection (2) shall, without prejudice to any liability apart from this subsection, be guilty of an offence and liable on summary conviction to a fine not exceeding £100.

68.—(1) Section 32 of the Children and Young Persons Act 1969 (detention of absentees) shall have effect subject to the following provisions of this section.

Extension of powers under section 32 of the Children and Young Persons Act 1969.

(2) In subsection (1) of the said section 32, paragraph (b) shall cease to have effect.

1969 c. 54.

(3) After subsection (1) of the said section 32, there is inserted the following subsection:—

“(1A) If a child or young person is absent from a place of safety to which he has been taken in pursuance of section 2(5), 16(3) or 28 of this Act without the consent of—

- (a) the person who made the arrangements for his detention in the place of safety in pursuance of the said section 2(5) or 16(3), or
- (b) the person on whose application an authorisation relating to the child or young person has been issued under the said section 28,

he may be arrested by a constable anywhere in the United Kingdom or the Channel Islands without a warrant, and shall, if so arrested, be conducted to the place of safety at the expense of the person referred to in paragraph (a) or (b) (as the case may be) of this subsection.”.

(4) In subsection (2) of the said section 32, after the words “subsection (1)” there are inserted the words “or (1A)”, and for the words “twenty pounds” there is substituted the word “£100”.

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(5) After the said subsection (2), the following subsections are inserted—

“(2A) Without prejudice to its powers under subsection (2) of this section, a magistrates’ court (within the meaning of that subsection) may, if it is satisfied by information on oath that there are reasonable grounds for believing that a person who is absent as mentioned in subsection (1) or (1A) of this section is in premises specified in the information, issue a search warrant authorising a constable to search the premises for that person.

(2B) A court shall not issue a summons or search warrant under subsection (2) or (2A) of this section in any case where the person who is absent is a person to whom subsection (1A) of this section applies, unless the information referred to in the said subsection (2) or (2A) is given by the person referred to in subsection (1A)(a) or (b) (as the case may be) of this section.”.

(6) In subsection (3) of the said section 32, for the words “one hundred pounds” there is substituted the word “£400”.

(7) In subsection (4) of the said section 32, for the words “subsection (1)” there are substituted the words “subsections (1), (1A) and (2A)”, and for the words “that subsection” there are substituted the words “subsection (1).”.

Certificates
of unruly
character.
1969 c. 54.

69. The court shall not certify under section 22(5) or section 23(2) or (3) of the Children and Young Persons Act 1969 (commitments to remand centres or prison) that a child is of so unruly a character that he cannot safely be committed to the care of a local authority unless the conditions prescribed by order made by the Secretary of State are satisfied in relation to that child.

In this section, “court” includes a justice.

Children of
unruly
character in
Scotland.
1975 c. 21.

70. The following provisions of the Criminal Procedure (Scotland) Act 1975 (which relate to children of unruly character) shall be amended in the manner specified in paragraphs (a) to (c) below—

(a) in sections 23(1)(b), 24(1), 297(1) and 329(1)(b) of the said Act of 1975 the following words are added at the end—

“; but the court shall not so certify a child unless such conditions as the Secretary of State may by order made by statutory instrument prescribe are satisfied in relation to the child.”;

(b) in sections 23(3) and 329(3) of the said Act of 1975 the following words are added at the end—

“; but a commitment shall not be so revoked unless such conditions as the Secretary of State may

by order made by statutory instrument prescribe are satisfied in relation to the said person.”; PART III

(c) in sections 24(2) and 297(2) of the said Act of 1975 the following words are added at the end—

“; but a commitment shall not be so revoked unless such conditions as the Secretary of State may by order made by statutory instrument prescribe are satisfied in relation to the child.”.

71. The following section is inserted after section 64 of the Children and Young Persons Act 1969—

“Grants in respect of secure accommodation.

64A.—(1) The Secretary of State may make to local authorities out of moneys provided by Parliament grants of such amount and subject to such conditions as he may with the consent of the Treasury determine in respect of expenditure incurred by the authorities in providing secure accommodation in community homes other than assisted community homes.

(2) The Secretary of State may with the consent of the Treasury require the local authority to repay the grant, in whole or in part, if the secure accommodation in respect of which the grant was made (including such accommodation in a controlled community home) ceases to be used as such.

(3) In this section “secure accommodation” means accommodation provided for the purposes of restricting the liberty of children in a community home.”.

Grants in respect of secure accommodation for children in England and Wales.
1969 c. 54.

72. The following section is inserted after section 59 of the Social Work (Scotland) Act 1968—

“Grants in respect of secure accommodation for children.

59A.—(1) The Secretary of State may make to a local authority grants of such amount and subject to such conditions as he may with the consent of the Treasury determine in respect of expenditure incurred by the authority in—

- (a) providing ;
- (b) joining with another local authority in providing ; or
- (c) contributing by way of grant under section 10(3) of this Act to the provision by a voluntary organisation of,

secure accommodation in residential establishments.

Grants in respect of secure accommodation for children in Scotland.
1968 c. 49.

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(2) The conditions subject to which grants are made under subsection (1) of this section may include conditions for securing the repayment in whole or in part of such grants.

(3) In this section "secure accommodation" means accommodation provided for the purpose of restricting the liberty of children."

Further amendments of Social Work (Scotland) Act 1968

Amendment
of s. 15 of
Social Work
(Scotland)
Act 1968.
1968 c. 49.

73. In section 15 of the Social Work (Scotland) Act 1968 the following subsections are inserted after subsection (3)—

"(3A) Subsection (8) (penalty for taking away a child in care etc.) of section 17 of this Act shall apply to a child in the care of a local authority under this section, notwithstanding that no resolution is in force under section 16 of this Act with respect to the child, if he has been in the care of that local authority throughout the preceding six months; and for the purposes of the application of paragraph (b) of that subsection in such a case a parent or guardian of the child shall not be taken to have lawful authority to take him away:

Provided that that subsection shall not by virtue of this subsection apply in relation to an act done—

- (a) with the consent of the local authority, or
- (b) by a parent or guardian of the child who has given the local authority not less than 28 days' notice of his intention to do it.

(3B) The Secretary of State may by order, a draft of which has been approved by each House of Parliament, amend subsection (3A) of this section by substituting a different period for the period of 28 days or of six months mentioned in that subsection (or for the period which by a previous order under this subsection, was substituted for that period)."

Substitution
of s. 16 of
Social Work
(Scotland)
Act 1968.

74. The following section is substituted for section 16 of the Social Work (Scotland) Act 1968—

"Resolution by local authority in respect of assumption and vesting of parental rights and powers.

16.—(1) Subject to the provisions of this Part of this Act, a local authority may resolve—

- (a) that there shall vest in them the relevant parental rights and powers with respect to any child who is in their care under section 15 of this Act; or
- (b) that there shall vest in a voluntary organisation which is an incorporated body, or a

trust within the meaning of section 2(a) of the Trusts (Scotland) Act 1921, the relevant parental rights and powers with respect to any child who is in the care of that organisation,

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1921 c. 58.

if it appears to the local authority—

- (i) that the parents of the child are dead and that he has no guardian ; or
- (ii) that there exists in respect of a parent or guardian of the child (the said parent or guardian being hereafter in this Part of this Act referred to as the person on whose account the resolution was passed) any of the circumstances specified in subsection (2) of this section ; or
- (iii) that a resolution under this subsection is in force in terms of sub-paragraph (ii) above in relation to one parent of the child and that parent is, or is likely to become, a member of the household comprising the child and his other parent ; or
- (iv) that throughout the three years preceding the passing of the resolution the child has been in the care of a local authority under section 15 of this Act, or in the care of a voluntary organisation or partly the one and partly the other.

(2) The circumstances referred to in sub-paragraph (ii) of subsection (1) of this section are that the person on whose account the resolution was passed—

- (a) has abandoned the child ; or
- (b) suffers from some permanent disability rendering him incapable of caring for the child ; or
- (c) while not falling within paragraph (b) of this subsection, suffers from a mental disorder (within the meaning of the Mental Health (Scotland) Act 1960) which renders him unfit to have the care of the child ; or
- (d) is of such habits or mode of life as to be unfit to have the care of the child ; or
- (e) has so persistently failed without reasonable cause to discharge the obligations of a parent or guardian as to be unfit to have the care of the child.

1960 c. 61.

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(3) In this section “the relevant parental rights and powers” means all the rights and powers in relation to the child (other than the right to consent or refuse to consent to the making of an application under section 14 or 25 of the Children Act 1975 and the right to agree or refuse to agree to the making of an adoption order)—

- (a) where the resolution was passed by virtue of circumstances specified in sub-paragraph (i) of subsection (1) of this section, which the deceased parents would have if they were still living ;
- (b) where the resolution was passed by virtue of circumstances specified in sub-paragraph (ii) of that subsection, of the person on whose account the resolution was passed ;
- (c) where the resolution was passed by virtue of circumstances specified in sub-paragraph (iii) of that subsection, of the parent other than the one on whose account the previous resolution was passed ;
- (d) where the resolution was passed by virtue of circumstances specified in sub-paragraph (iv) of that subsection, of the parents or guardian of the child.

(4) A local authority shall not pass a resolution under paragraph (b) of subsection (1) of this section unless—

- (a) it is satisfied that the child is not in the care of any local authority under any enactment ; and
- (b) it is satisfied that it is necessary in the interests of the welfare of the child for the parental rights and powers to be vested in the voluntary organisation ; and
- (c) the child is living in the area of the local authority either in a residential establishment or with foster parents with whom he has been boarded out by the voluntary organisation in whose care he is ; and
- (d) that organisation has requested the local authority to pass the resolution.

(5) In the case of a resolution passed under subsection (1) of this section by virtue of circumstances specified in sub-paragraph (ii), (iii) or (iv) thereof, unless the person whose parental rights and powers

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have under the resolution vested in the local authority or in the voluntary organisation as the case may be, has consented in writing to the passing of the resolution, the local authority, if that person's whereabouts are known to them, shall forthwith after the passing of the resolution serve on him notice in writing of the passing thereof.

(6) Every notice served by a local authority under subsection (5) of this section shall inform the person on whom the notice is served of his right to object to the resolution and of the effect of any objection made by him.

(7) If, not later than one month after notice is served on a person under subsection (5) of this section, he serves a counter-notice in writing on the local authority objecting to the resolution, the resolution shall, subject to the provisions of subsection (8) of this section, lapse on the expiry of fourteen days from the service of the counter-notice.

(8) Where a counter-notice has been served on a local authority under subsection (7) of this section, the authority may, not later than fourteen days after the receipt by them of the counter-notice, make a summary application in respect thereto to the sheriff having jurisdiction in the area of the authority, and in that event the resolution shall not lapse until the determination of the application; and the sheriff may, on the hearing of the application, order that the resolution shall not lapse by reason of the service of the counter-notice:

Provided that the sheriff shall not so order unless satisfied—

- (a) that it is in the interests of the child to do so; and
- (b) that the grounds mentioned in subsection (1) of this section on which the local authority purported to pass the resolution were made out; and
- (c) that at the time of the hearing there continued to be grounds on which a resolution under subsection (1) of this section could be founded.

(9) While a resolution passed under subsection (1) of this section by virtue of circumstances specified in sub-paragraph (ii), (iii) or (iv) thereof is in force with respect to a child, that part of subsection (3) of

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section 15 of this Act from the words “and nothing in this section shall authorise” onwards shall not apply in relation to the person who, but for the resolution, would have the relevant parental rights and powers in relation to the child.

(10) Any notice under this section (including a counter-notice) may be served by post, but a notice served by a local authority under subsection (5) of this section shall not be duly served by post unless it is sent by registered post or recorded delivery service.

(11) A resolution under this section shall cease to have effect if—

(a) the child becomes the subject of an adoption order within the meaning of Schedule 2 to the Children Act 1975 ; or

(b) an order in respect of the child is made under section 14 or section 25 of the Children Act 1975 ; or

(c) a person is appointed, under section 4(2A) of the Guardianship of Infants Act 1925, to be the guardian of the child ; or

(d) it is a resolution under paragraph (b) of subsection (1) of this section and a resolution is passed under subsection (1) of section 16A of this Act in respect of the child.

(12) If the whereabouts of any parent or guardian of a child have remained unknown for twelve months, and throughout that period the child has been in the care of a local authority under section 15 of this Act, or in the care of a voluntary organisation, or partly the one and partly the other, then for the purposes of this section that parent or guardian shall be deemed to have abandoned the child.

(13) The Secretary of State may by order, a draft of which has been approved by each House of Parliament, amend sub-paragraph (iv) of subsection (1) of this section to substitute a different period for the period of three years mentioned in that sub-paragraph (or for the period which, by a previous order under this subsection, was substituted for that period).”.

75. The following section is inserted after section 16 of the Social Work (Scotland) Act 1968—

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“Duty of local authority to assume parental rights and powers vested in a voluntary organisation.

Duty of local authority in Scotland to assume parental rights and powers vested in a voluntary organisation.
1968 c. 49.

16A.—(1) If it appears to a local authority, having regard to the interests of the welfare of a child living within their area, the parental rights and powers in respect of whom are by virtue of a resolution under section 16(1)(b) of this Act (hereafter in this section referred to as “the earlier resolution”) vested in a voluntary organisation, that it is necessary that the said parental rights and powers should no longer be vested in the organisation, the local authority shall resolve that the said parental rights and powers shall vest in them; and the said parental rights and powers shall so vest from the date of the resolution under this subsection.

(2) The local authority shall, within seven days of passing a resolution under subsection (1) of this section, by notice in writing inform—

- (a) the organisation who but for that resolution; and
- (b) any person, in so far as that person’s whereabouts are known to them, who, but for that resolution and the earlier resolution,

would have the parental rights and powers in respect of the child, of the passing thereof.

(3) On a summary application being made for the determining of a resolution under subsection (1) of this section by a person who but for that resolution and the earlier resolution would have the parental rights and powers in respect of the child, the sheriff having jurisdiction where the applicant resides may order that—

- (a) the resolution under subsection (1) of this section shall continue to have effect; or
- (b) the resolution under subsection (1) of this section shall cease to have effect and that the earlier resolution shall again take effect; or
- (c) the resolution under subsection (1) of this section shall cease to have effect and that the parental rights and powers in respect of the child shall again vest in the applicant; or
- (d) the resolution under subsection (1) of this section shall continue to have effect, but

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that either for a fixed period or until the sheriff, or if the order so provides, the local authority, otherwise directs, the local authority shall allow the care of the child to be taken over by, and the child to be under the control of, the applicant.

(4) In hearing an application under subsection (3) of this section the sheriff may consider whether there was any ground for the making of the earlier resolution, and if he is satisfied that there was no ground for the making of that earlier resolution he shall make an order under subsection (3)(c) of this section.

(5) In this section "the parental rights and powers" means all the rights and powers in relation to the child which in accordance with the earlier resolution were vested in the voluntary organisation.

(6) While a resolution under subsection (1) of this section is in force with respect to a child, the child shall be deemed to have been received into and to be in the care of the local authority by virtue of section 15 of this Act, and subsections (2) to (5) of that section shall apply accordingly; except that where the earlier resolution was passed by virtue of circumstances specified in sub-paragraph (ii), (iii) or (iv) of subsection (1) of section 16 of this Act, that part of subsection (3) of section 15 of this Act from the words "and nothing in this section shall authorise" onwards shall not apply in relation to the person who but for the earlier resolution and the resolution under subsection (1) of this section, would have the parental rights and powers in relation to the child.

(7) Subsection (11)(a), (b) and (c) of section 16, subsections (3) and (4) to (9) of section 17 and subsections (1), (2), (4) and (4A) of section 18 of this Act shall apply to a resolution under this section as they apply to a resolution under section 16(1)(a) of this Act.

(8) A notice served by a local authority under subsection (2) of this section shall not be duly served by post unless it is sent by registered post or recorded delivery service."

76. In section 17 of the Social Work (Scotland) Act 1968 (effect of assumption of parental rights) the following subsection is inserted after subsection (9)—

PART III

Return of children taken away in breach of section 17(8) or (9) of Social Work (Scotland) Act 1968.
1968 c. 49.

“(10) Where an offence under subsection (8) or (9) of this section has been or is believed to have been committed, a constable, or any person authorised by any court or by any justice of the peace, may take and return the child to the local authority or voluntary organisation in whom are vested the parental rights and powers relating to the child.”.

77. In section 18 of the Social Work (Scotland) Act 1968 the following subsection is inserted after subsection (4)—

Making of adoption orders where local authority or voluntary organisations have parental rights.

“(4A) A court may entertain an application under—

- (a) section 8 of the Children Act 1975 for an adoption order in respect of a child ;
- (b) section 14 of the Children Act 1975 for an order declaring a child free for adoption ;
- (c) section 25 of the Children Act 1975 for an order vesting the parental rights and duties relating to a child ;

notwithstanding that, by virtue of a resolution under section 16 of this Act, a local authority or a voluntary organisation have parental rights with respect to him.”.

78. In the Social Work (Scotland) Act 1968 the following section is inserted after section 18—

“Safeguarding of interests of children in proceedings relating to the assumption of parental rights.

18A.—(1) In any proceedings under section 16(8), 16A(3) or 18(3) of this Act, the sheriff—

Safeguarding of interests of children in proceedings in Scotland relating to the assumption of parental rights.

- (a) shall consider whether it is necessary to appoint a person for the purpose of safeguarding the interests of the child in the proceedings ; and
- (b) without prejudice to any existing power to appoint a person to represent the interests of the child, may, if he thinks fit, appoint a person to act for the purpose specified in paragraph (a) above.

(2) The power to make rules under section 32 of the Sheriff Courts (Scotland) Act 1971 shall include power to make rules providing for—

1971 c. 58.

- (a) the procedure in relation to the disposal of matters arising under this section ;
- (b) appointment under subsection (1) of this section, the functions of a person so appointed

PART III

and any right of such a person to information relating to the proceedings in question.”.

Amendment of section 20 of Social Work (Scotland) Act. 1968 c. 49. **79.** The following subsection is substituted for subsection (1) of section 20 of the Social Work (Scotland) Act 1968—

“(1) Where a child is in the care of a local authority under any enactment, the local authority shall, in reaching any decision relating to the child, give first consideration to the need to safeguard and promote the welfare of the child throughout his childhood; and shall so far as practicable ascertain the wishes and feelings of the child regarding the decision and give due consideration to them, having regard to his age and understanding.”.

Review of case of child in care in Scotland.

80. In the Social Work (Scotland) Act 1968 the following section is inserted after section 20—

“Review of case of child in care.

20A.—(1) Without prejudice to their general duty under section 20(1) of this Act, it shall be the duty of a local authority who have at any time had a child in their care throughout the preceding six months and have not during that period held a review of his case, to review his case as soon as is practicable after the expiration of that period and, if a supervision requirement is in force with respect to him, the local authority shall consider in the course of the review whether to refer his case to their reporter for review of that requirement by a children’s hearing.

(2) The Secretary of State may by regulations—

(a) amend subsection (1) of this section by—

(i) substituting a different period for the period of six months mentioned in that subsection (or for any period which, by previous regulations under this subsection, was substituted for that period);

(ii) specifying different periods in respect of the first review under that subsection occurring after a child has been taken into care, and in respect of subsequent such reviews;

(b) make provision as to the manner in which cases are to be reviewed under this section;

(c) make provision as to the considerations to which the local authority are to have regard in reviewing cases under this section.”.

81. The following section is inserted after section 25 of the Social Work (Scotland) Act 1968—

PART III

“Restriction on removal of child from care of voluntary organisation.

25A.—(1) Section 17(8) of this Act shall apply in relation to a child who is not in the care of a local authority under section 15 of this Act but who is in the care of a voluntary organisation, as it applies by virtue of subsection (3A) of the said section 15 to a child in the care of a local authority except that, in the case of a child who is not in the care of a local authority, references in subsection (3A) to a local authority shall be construed as references to the voluntary organisation in whose care the child is.

Restriction on removal of child from care of voluntary organisation. 1968 c. 49.

(2) For the purposes of this section, a child is in the care of a voluntary organisation if the voluntary organisation is providing accommodation for the child in a residential establishment or has boarded out the child.”.

82. The following section is inserted after section 36 of the Social Work (Scotland) Act 1968—

“Power of reporters to conduct proceedings before a sheriff.

36A. The Secretary of State and the Lord Advocate may, by regulations—

Power of reporters to conduct proceedings under the Social Work (Scotland) Act 1968.

(a) empower officers or any officer or class of officers appointed under section 36 of this Act, whether or not they are advocates or solicitors, to conduct before a sheriff—

(i) any proceedings which, under this Act are heard by the sheriff in chambers;

(ii) any application under section 37 or 40 of this Act in relation to a warrant;

(b) prescribe such requirements as they think fit as to qualifications, training or experience necessary for any officer to be so empowered.”.

83. In section 37 of the Social Work (Scotland) Act 1968—

Amendment of section 37 of Social Work (Scotland) Act 1968.

(a) the following subsection is inserted after subsection (1)—

“(1A) Where a local authority receive information suggesting that a child may be in need of compulsory measures of care, they shall—

(a) cause enquiries to be made into the case unless they are satisfied that such enquiries are unnecessary; and

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- (b) if it appears to them that the child may be in need of compulsory measures of care, give to the reporter such information about the child as they may have been able to discover.”;

(b) for subsection (2) there is substituted—

“ (2) A constable or any person authorised by any court or by any justice of the peace may take to a place of safety any child—

1975 c. 21.

- (a) in respect of whom any of the offences mentioned in Schedule 1 to the Criminal Procedure (Scotland) Act 1975 has been or is believed to have been committed ; or

- (b) who is a member of the same household as a child in respect of whom such an offence has been or is believed to have been committed ; or

- (c) who is, or is likely to become, a member of the same household as a person who has committed or is believed to have committed such an offence ; or

1937 c. 37.

- (d) in respect of whom an offence under section 21(1) of the Children and Young Persons (Scotland) Act 1937 has been or is believed to have been committed ; or

- (e) who is likely to be caused unnecessary suffering or serious impairment of health because there is, or is believed to be, in respect of the child a lack of parental care,

and any child so taken to a place of safety or any child who has taken refuge in a place of safety may be detained there until arrangements can be made for him to be brought before a children’s hearing under the following provisions of this Part of this Act ; and, where a child is so detained, the constable or the person authorised as aforesaid or the occupier of the place of safety shall forthwith inform the reporter of the case.” ;

- (c) in subsection (5), after “ renewed ” there is inserted “ by a children’s hearing ” ;

(d) the following subsections are inserted after subsection (5)—

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“(5A) Where a warrant has been renewed under subsection (5) of this section but it appears to the reporter—

(a) that the children’s hearing will not be able to dispose of the child’s case before the expiry of the period of detention required by the warrant as renewed ; and

(b) that further detention of the child is necessary in the child’s own interest,

the reporter may apply to the sheriff for a warrant requiring the child to be detained in a place of safety for such a period not exceeding twenty-one days as may be necessary and the sheriff may issue such a warrant if he is satisfied that such detention is necessary in the child’s own interest.

(5B) On cause shown a warrant authorising detention under subsection (5A) of this section may be renewed by the sheriff on one occasion only, for the period mentioned in that subsection on the application of the reporter.”.

84. In section 40 of the Social Work (Scotland) Act 1968—
 (a) for subsection (7) there is substituted—
 “(7) Where a children’s hearing before whom a child is brought are unable to dispose of his case and—

Amendment of section 40 of Social Work (Scotland) Act 1968. 1968 c. 49.

(a) have reason to believe that the child may not attend at any hearing of his case, or at any proceedings arising from the case or may fail to comply with a requirement under section 43(4) of this Act ; or

(b) are satisfied that detention of the child is necessary in his own interest, they may issue a warrant requiring the child to be detained in a place of safety for such a period not exceeding twenty-one days as may be necessary.”;

(b) for subsection (8) there is substituted—

“(8) On cause shown a warrant authorising detention under subsection (7) of this section may be renewed by a children’s hearing on one occasion only, for the

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period mentioned in that subsection, on the application of the reporter.” ;

(c) the following subsections are inserted after subsection (8)—

“(8A) Where a warrant has been renewed under subsection (8) of this section but it appears to the reporter—

(a) that the children’s hearing will not be able to dispose of the child’s case before the expiry of the period of detention required by the warrant as renewed ; and

(b) that further detention of the child is necessary in the child’s own interest, the reporter may apply to the sheriff for a warrant requiring the child to be detained in a place of safety for such a period not exceeding twenty-one days as may be necessary, and the sheriff may issue such a warrant if he is satisfied that such detention is necessary in the child’s own interest.

(8B) On cause shown, a warrant authorising detention under subsection (8A) of this section may be renewed by the sheriff on one occasion only, for the period mentioned in that subsection, on the application of the reporter.”.

PART IV

FURTHER AMENDMENTS
OF LAW OF ENGLAND AND WALES

Explanation of concepts

Parental
rights and
duties.

85.—(1) In this Act, unless the context otherwise requires, “the parental rights and duties” means as respects a particular child (whether legitimate or not), all the rights and duties which by law the mother and father have in relation to a legitimate child and his property ; and references to a parental right or duty shall be construed accordingly and shall include a right of access and any other element included in a right or duty.

1973 c. 29.

(2) Subject to section 1(2) of the Guardianship Act 1973 (which relates to separation agreements between husband and wife), a person cannot surrender or transfer to another any parental right or duty he has as respects a child.

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(3) Where two or more persons have a parental right or duty jointly, any one of them may exercise or perform it in any manner without the other or others if the other or, as the case may be, one or more of the others have not signified disapproval of its exercise or performance in that manner.

(4) From the death of a person who has a parental right or duty jointly with one other person, or jointly with two or more other persons, that other person has the right or duty exclusively or, as the case may be, those other persons have it jointly.

(5) Where subsection (4) does not apply on the death of a person who has a parental right or duty, that right or duty lapses, but without prejudice to its acquisition by another person at any time under any enactment.

(6) Subsections (4) and (5) apply in relation to the dissolution of a body corporate as they apply in relation to the death of an individual.

(7) Except as otherwise provided by or under any enactment, while the mother of an illegitimate child is living she has the parental rights and duties exclusively.

86. In this Act, unless the context otherwise requires, "legal custody" means, as respects a child, so much of the parental rights and duties as relate to the person of the child (including the place and manner in which his time is spent); but a person shall not by virtue of having legal custody of a child be entitled to effect or arrange for his emigration from the United Kingdom unless he is a parent or guardian of the child. Legal custody.

87.—(1) A person has actual custody of a child if he has actual possession of his person, whether or not that possession is shared with one or more other persons. Actual custody.

(2) While a person not having legal custody of a child has actual custody of the child he has the like duties in relation to the child as a custodian would have by virtue of his legal custody.

(3) In this Act, unless the context otherwise requires, references to the person with whom a child has his home refer to the person who, disregarding absence of the child at a hospital or boarding school and any other temporary absence, has actual custody of the child.

88. A child is in the care of a voluntary organisation if— Child in care of voluntary organisation.

- (a) the organisation has actual custody of him, or
- (b) having had actual custody of him, the organisation has transferred that custody to an individual who does not have legal custody of him.

- PART IV
Amendment of Interpretation Act 1889.
1889 c. 63.
- 89.**—(1) In the Interpretation Act 1889 after section 19 there is inserted the following section—
- 19A.**—(1) In any Act passed after the Children Act 1975, unless the contrary intention appears—
- (a) the expression “the parental rights and duties”,
 - (b) the expression “legal custody” (as respects a child), and
 - (c) references to the person with whom a child has his home,
- shall be construed in accordance with Part IV of the Children Act 1975.
- (2) This section does not extend to Scotland or Northern Ireland.”

Reports in guardianship and matrimonial proceedings

- Procedure in guardianship proceedings.
1973 c. 29.
- 90.**—(1) The following subsections are substituted for subsections (2) and (3) of section 6 of the Guardianship Act 1973:—
- “(2) A report made in pursuance of subsection (1) above to a magistrates’ court shall be made to the court at a hearing of the application unless it is in writing in which case—
- (a) a copy of the report shall be given to each party to the proceedings or to his counsel or solicitor either before or during a hearing of the application ; and
 - (b) if the court thinks fit, the report, or such part of the report as the court requires, shall be read aloud at a hearing of the application.
- (3) A magistrates’ court may and, if requested to do so at the hearing by a party to the proceedings or his counsel or solicitor, shall, require the officer by whom the report was made to give evidence of or with respect to the matters referred to in the report and if the officer gives such evidence, any party to the proceedings may give or call evidence with respect to any such matter or any matter referred to in the officer’s evidence.
- (3A) A magistrates’ court may take account of—
- (a) any statement contained in a report made at a hearing of the application or of which copies have been given to the parties or their representatives in accordance with subsection (2)(a) above ; and

(b) any evidence given by the officer under subsection (3) above,

in so far as the statement or evidence is, in the opinion of the court, relevant to the application, notwithstanding any enactment or rule of law to the contrary.”.

(2) The following subsection is added after subsection (5) of the said section 6—

“(6) A single justice may request a report under subsection (1) of this section before the hearing of the application, but in such a case the report shall be made to the court which hears the application, and the foregoing provisions of this section shall apply accordingly.”.

91.—(1) The following subsections are substituted for subsections (3) and (4) of section 4 of the Matrimonial Proceedings (Magistrates’ Courts) Act 1960—

Procedure in matrimonial proceedings.
1960 c. 48.

“(3) A report made in pursuance of subsection (2) of this section shall be made to the court at a hearing of the complaint unless it is in writing in which case—

- (a) a copy of the report shall be given to each party to the proceedings or to his counsel or solicitor either before or during a hearing of the complaint ; and
- (b) if the court thinks fit, the report, or such parts of the report as the court requires, shall be read aloud at a hearing of the complaint.

(4) The court may and, if requested to do so at the hearing by a party to the proceedings or his counsel or solicitor, shall, require the officer by whom the report was made to give evidence on or with respect to the matters referred to in the report and if the officer gives such evidence, any party to the proceedings may give or call evidence on or with respect to any such matter or any matter referred to in the officer’s evidence.

(4A) Subject to the next following subsection, the court may take account of—

- (a) any statement contained in a report made at a hearing of the complaint or of which copies have been given to the parties or their representatives in accordance with subsection (3)(a) of this section ; and

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(b) any evidence given by the officer under subsection (4) of this section,

in so far as the statement or evidence relates to the matters specified by the court under subsection (2) of this section, notwithstanding any enactment or rule of law to the contrary.”

(2) In subsection (5) of the said section 4, for “subsection (4)” there is substituted “subsections (4) and (4A)”.

Registration of births

Registration of births of abandoned children.
1953 c. 20.

92. The following section is inserted after section 3 of the Births and Deaths Registration Act 1953—

“Registration of births of abandoned children.

3A.—(1) Where the place and date of birth of a child who was abandoned are unknown to, and cannot be ascertained by, the person who has charge of the child, that person may apply to the Registrar General for the child’s birth to be registered under this section.

(2) On an application under this section the Registrar General shall enter in a register maintained at the General Register Office—

(a) as the child’s place of birth, if the child was found by the applicant or by any person from whom (directly or indirectly) the applicant took charge of the child, the registration district and sub-district where the child was found, or, in any other case, where the child was abandoned ;

(b) as the child’s date of birth, the date which, having regard to such evidence as is produced to him, appears to him to be the most likely date of birth of the child, and

(c) such other particulars as may be prescribed.

(3) The Registrar General shall not register a child’s birth under this section if—

(a) he is satisfied that the child was not born in England or Wales ; or

(b) the child has been adopted in pursuance of a court order made in the United Kingdom, the Isle of Man or the Channel Islands ; or

(c) subject to subsection (5) below, the child’s birth is known to have been previously registered under this Act.

(4) If no entry can be traced in any register of births relating to a person who has attained the age

of 18 and has not been adopted as aforesaid, that person may apply to the Registrar General for his birth to be registered under this section.

(5) On the application of—

(a) a person having the charge of a child whose birth had been registered under this Act by virtue of the proviso to section 1 of this Act (as originally enacted), or

(b) any such child who has attained the age of 18 years,

the Registrar General shall re-register the birth of the child under this section, and shall direct the officer having custody of the register of births in which the entry relating to the child was previously made to enter in the margin of the register a reference to the re-registration of the birth."

93.—(1) At the end of paragraph (b) of section 10 of the Births and Deaths Registration Act of 1953 (which makes provision for the registration of fathers of illegitimate children) there is added "or

Registration of father of illegitimate child.

1953 c. 20.

(c) at the request of the mother (which shall be made in writing) on production of—

(i) a certified copy of an order made under section 4 of the Affiliation Proceedings Act 1957 naming that person as the putative father of the child, and

1957 c. 55.

(ii) if the child has attained the age of 16 years, the written consent of the child to the registration of that person as his father."

(2) After the said section 10 there is inserted the following section—

" Re-registration of births of illegitimate children.

10A.—(1) Where the birth of an illegitimate child has been registered under this Act but no person has been registered as the child's father, the registrar shall re-register the birth so as to show a person as the father—

(a) at the joint request of the mother and of that person ; or

(b) at the request of the mother on production of—

(i) a declaration in the prescribed form made by the mother stating that that person is the father of the child ; and

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1957 c. 55.

- (ii) a statutory declaration made by that person acknowledging himself to be the father of the child ; or
- (c) at the request of the mother (which shall be made in writing) on production of—
 - (i) a certified copy of an order made under section 4 of the Affiliation Proceedings Act 1957 naming that person as the putative father of that child, and
 - (ii) if the child has attained the age of 16 years, the written consent of the child to the registration of that person as his father ;

but no birth shall be re-registered under this section except in the prescribed manner and with the authority of the Registrar General.

(2) On the re-registration of a birth under this section—

- (a) the registrar and the mother shall sign the register ;
- (b) in the case of a request under paragraph (a) of subsection (1) of this section, the other person making the request shall also sign the register ; and
- (c) if the re-registration takes place more than three months after the birth, the superintendent registrar shall also sign the register.”.

(3) In section 9 of the said Act of 1953 (which enables information required to be given to the registrar to be given to other persons) after subsection (3) there are added the following subsections—

“ (4) A request made under section 10 of this Act may be included in a declaration under subsection (1) of this section, and, if the request is made under paragraph (b) or (c) of that section, the documents required by that paragraph to be produced shall be produced to the officer in whose presence the declaration is made and sent by him with the declaration to the registrar.

(5) A request made under section 10A of this Act instead of being made to the registrar may be made by making and signing in the presence of and delivering to a prescribed officer a statement in the prescribed form and producing to the officer any documents required to be produced by that section, and—

- (a) the officer shall send the request together with those documents, if any, to the

- registrar who shall with the authority of the Registrar General re-register the birth as if the request had been made to him ; and
- (b) the person or persons who sign the statement shall be deemed to have signed the register as required by subsection (2) of that section.”.

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Extent of Part IV

94. This Part does not extend to Scotland.

Extent of
Part IV.

PART V

MISCELLANEOUS AND SUPPLEMENTAL

Foster children

95.—(1) In section 1 of the Children Act 1958 (visiting of foster children), the words “so far as appears to the authority to be appropriate” shall cease to have effect, and for the words “from time to time” there are substituted the words “in accordance with regulations made under section 2A of this Act”.

Visiting
of foster
children.
1958 c. 65.

(2) In section 1A of the Children Act 1958 (visiting of foster children in Scotland) the words “where the local authority consider such a course to be necessary or expedient for the purposes of this section,” shall cease to have effect, and for the words “from time to time” there are substituted the words “in accordance with regulations made under section 2A of this Act.”.

(3) The following section is inserted in the said Act after section 2—

“Visits to
foster
children.

2A.—(1) The Secretary of State may make regulations requiring foster children in a local authority’s area to be visited by an officer of the local authority on specified occasions or within specified periods of time.

(2) Every person who is maintaining a foster child within the area of a local authority on the date on which regulations made under subsection (1) of this section come into operation, and who before that date has not given notice in respect of the child to the local authority under section 3(1) of this Act, shall within eight weeks of that date give written notice that he is maintaining the child to the local authority.

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(3) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”.

(4) In section 3 of the said Act, as it applies to England and Wales, (duty of persons maintaining foster children to notify local authority)—

(a) in subsection (5A), for the words “one or more foster children” there are substituted the words “a foster child”, and for the words “foster children” and “any foster children” there are substituted the words “that foster child”;

(b) in subsection (5B) for the words “foster children” there are substituted the words “a foster child”, and for the words “any of them as a” there is substituted the word “that”;

(c) the following subsection is added at the end—

“(8) Subsection (2A) of this section shall cease to have effect on the date regulations made under section 2A of this Act come into operation.”.

Notification
by parents.
1958 c. 65.

96.—(1) The following section is inserted in the Children Act 1958 after section 3—

“Notifica-
tion by
parents.

3A.—(1) The Secretary of State may by regulations made by statutory instrument make provision for requiring parents whose children are or are going to be maintained as foster children to give to the local authority for the area where the children are, or are going to be, living as foster children, such information about the fostering as may be specified in the regulations.

(2) Regulations under this section—

(a) may include such incidental and supplementary provisions as the Secretary of State thinks fit;

(b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.”.

(2) In section 14 of the said Act (offences), in subsection (1)(a), after the words “this Part of this Act” there are inserted the words “or under regulations made under section 3A of this Act”.

97.—(1) In section 37 of the Children Act 1958 the following subsections are inserted after subsection (1) —

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“(1A) The Secretary of State may by regulations prohibit the parent or guardian of any child from publishing or causing to be published an advertisement indicating that foster parents are sought for the child.”

Advertisements relating to foster children.
1958 c. 65.

(1B) The Secretary of State may by regulations prohibit—

(a) a member of a class of persons specified in the regulations, or

(b) a person other than a person, or other than a member of a class of persons, specified in the regulations,

from publishing or causing to be published any advertisement indicating that he is willing to undertake, or to arrange for, the care and maintenance of a child.

(1C) Regulations made under this section—

(a) may make different provision for different cases or classes of cases, and

(b) may exclude certain cases or classes of cases, and shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.”

(2) In subsection (2) of the said section 37, after the words “this section” there are inserted the words “or of regulations made under this section”.

Inquiries

98.—(1) The Secretary of State may cause an inquiry to be held into any matter relating to—

Inquiries in England and Wales.

(a) the functions of the social services committee of a local authority, in so far as those functions relate to children ;

(b) the functions of an adoption agency ;

(c) the functions of a voluntary organisation in so far as those functions relate to voluntary homes ;

(d) a home maintained by the Secretary of State for the accommodation of children who are in the care of local authorities and are in need of the particular facilities and services provided in the home ;

(e) the detention of a child under section 53 of the Children and Young Persons Act 1933.

1933 c. 12.

PART V

(2) The Secretary of State may, before an inquiry is commenced, direct that it shall be held in private, but where no such direction has been given, the person holding the inquiry may if he thinks fit hold it or any part of it in private.

1972 c. 70.

(3) Subsections (2) to (5) of section 250 of the Local Government Act 1972 (powers in relation to local inquiries) shall apply in relation to an inquiry under this section as they apply in relation to a local inquiry under that section.

(4) In this section—

“functions” includes powers and duties which a person has otherwise than by virtue of any enactment;

“voluntary home” means a home or other institution for the boarding, care and maintenance of poor children which is supported wholly or partly by voluntary contributions, but does not include a mental nursing home or residential home for mentally disordered persons within the meaning of Part III of the Mental Health Act 1959.

1959 c. 72.

(5) This section does not apply to Scotland.

Inquiries in
Scotland.

99.—(1) In Scotland the Secretary of State may cause an inquiry to be held into any matter relating to—

1968 c. 49.

(a) the functions of a local authority under the Social Work (Scotland) Act 1968 in so far as the matter relates to children;

(b) the functions of a local authority under the enactments specified in paragraph (a) of section 1(4) and paragraphs (b) to (e) and (h) of section 2(2) of the Social Work (Scotland) Act 1968;

(c) the functions of an adoption society;

(d) the functions of a voluntary organisation in so far as those functions relate to establishments to which sections 61 to 68 of the Social Work (Scotland) Act 1968 apply and in so far as the matter relates to children; or

(e) the detention of a child under—

1937 c. 37.

(i) section 57 or 58A of the Children and Young Persons (Scotland) Act 1937; or

1975 c. 21.

(ii) section 206 or 413 of the Criminal Procedure (Scotland) Act 1975.

(2) The Secretary of State may, before an inquiry is commenced, direct that it shall be held in private, but where no such direction has been given, the person holding the inquiry may if he thinks fit hold it or any part of it in private.

(3) Subsections (2) to (8) of section 210 of the Local Government (Scotland) Act 1973 (powers in relation to local inquiries) shall apply in relation to an inquiry under this section as they apply in relation to a local inquiry under that section. PART V
1973 c. 65.

(4) In this section "functions" includes powers and duties exercisable otherwise than by virtue of any enactment.

Supplemental

100.—(1) In this Act "authorised court", as respects an application for an order relating to a child, shall be construed as follows. Courts.

(2) If the child is in England or Wales when the application is made, the following are authorised courts—

(a) the High Court ;

(b) the county court within whose district the child is and, in the case of an application under section 14, any county court within whose district a parent or guardian of the child is ;

(c) any other county court prescribed by rules made under section 102 of the County Courts Act 1959 ; 1959 c. 22.

(d) a magistrates' court within whose area the child is and, in the case of an application under section 14, a magistrates' court within whose area a parent or guardian of the child is.

(3) If the child is in Scotland when the application is made, the following are authorised courts—

(a) the Court of Session ;

(b) the sheriff court of the sheriffdom within which the child is.

(4) If, in the case of an application for an adoption order or an order under section 14, the child is not in Great Britain when the application is made, the following are authorised courts—

(a) the High Court ;

(b) the Court of Session.

(5) In the case of a Convention adoption order paragraphs (b), (c) and (d) of subsection (2) or, as the case may be, paragraph (b) of subsection (3) do not apply.

(6) In the case of an order under section 25, paragraph (d) of subsection (2) does not apply.

(7) Subsection (2) applies in the case of an application for an order under section 34, 35 or 38 relating to a child who is

PART V

subject to a custodianship order whether or not the child is in England or Wales and for the purposes of such an application the following are also authorised courts—

- (a) the court which made the custodianship order and, where that court is a magistrates' court, any other magistrates' court acting for the same petty session area ;
- (b) the county court within whose district the applicant is ;
- (c) a magistrates' court within whose area the applicant is ;
- (d) where the application is made under section 35 and the child's mother or father or custodian is the petitioner or respondent in proceedings for a decree of divorce, nullity or judicial separation which are pending in a court in England or Wales, that court.

(8) Subsection (2) does not apply in the case of an application under section 30 or 42 but for the purposes of such an application the following are authorised courts—

- (a) if there is pending in respect of the child an application for an adoption order or an order under section 14 or a custodianship order, the court in which that application is pending ;
- (b) in any other case, the High Court, the county court within whose district the applicant lives and the magistrates' court within whose area the applicant lives.

(9) Subsections (3) and (8) do not apply in the case of an application under section 30 in Scotland but for the purposes of such an application the following are authorised courts—

- (a) if there is pending in respect of the child an application for—
 - (i) an adoption order ; or
 - (ii) an order under section 14,
 the court in which that application is pending ;
- (b) in any other case—
 - (i) the Court of Session ;
 - (ii) the sheriff court of the sheriffdom within which the applicant resides.

Appeals etc.

101.—(1) Where any application has been made under this Act to a county court, the High Court may, at the instance of any party to the application, order the application to be removed to the High Court and there proceeded with on such terms as to costs as it thinks proper.

(2) Subject to subsection (3), where on an application to a magistrates' court under this Act the court makes or refuses to make an order, an appeal shall lie to the High Court.

(3) Where an application is made to a magistrates' court under this Act, and the court considers that the matter is one which would more conveniently be dealt with by the High Court, the magistrates' court shall refuse to make an order, and in that case no appeal shall lie to the High Court.

102.—(1) Any agreement or consent which is required by Part I, except section 24(6), or Part II to be given to the making of any order or application for an order may be given in writing, and, if the document signifying the agreement or consent is—

- (a) in the case of an adoption order or an application for an order under section 14, witnessed in accordance with rules, or
- (b) in the case of an application made under Part II, witnessed in accordance with rules of court,

it shall be admissible in evidence without further proof of the signature of the person by whom it was executed.

(2) A document signifying such agreement or consent which purports to be witnessed in accordance with rules or, as the case may be, with rules of court shall be presumed to be so witnessed, and to have been executed and witnessed on the date and at the place specified in the document, unless the contrary is proved.

(3) In the application of this section to Scotland—

- (a) for “made under Part II” there is substituted “to which Part II applies”;
- (b) for “admissible in evidence” there is substituted “sufficient evidence”; and
- (c) for “rules of court” there is substituted “act of sederunt”.

103.—(1) The Secretary of State may by regulations make provision for the establishment of a panel of persons from whom—

- (a) guardians ad litem and reporting officers may in accordance with rules or rules of court be appointed for the purposes of—

- (i) section 20 of this Act;
- (ii) section 32B of the Children and Young Persons Act 1969;
- (iii) section 4B of the Children Act 1948;

- (b) persons may be appointed for the purposes of section 18A or 34A of the Social Work (Scotland) Act 1968.

PART V

(2) Regulations under subsection (1) may provide for the expenses incurred by members of the panel to be defrayed by local authorities.

(3) In relation to Scotland, the reference in subsection (1) to guardians ad litem shall be construed as a reference to curators ad litem.

Saving for powers of High Court.

104. Nothing in this Act shall restrict or affect the jurisdiction of the High Court to appoint or remove guardians, or otherwise in respect of children.

Periodic review of Act.

105. The Secretary of State shall, within three years of the first of the dates appointed by order by the Secretary of State under section 108(2) and, thereafter, every five years lay before Parliament a report on the operation of those sections of the Act which are in force at that time; and the Secretary of State shall institute such research as is necessary to provide the information for these reports.

Regulations and orders.

106.—(1) Where a power to make regulations or orders is exercisable by the Secretary of State by virtue of this Act, regulations or orders made in the exercise of that power shall be made by statutory instrument and may—

(a) make different provision in relation to different cases or classes of case, and

(b) exclude certain cases or classes of case.

(2) A statutory instrument containing regulations made by the Secretary of State under section 103 shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) Any power conferred on the Secretary of State by this Act to make orders includes a power to vary or revoke an order so made.

Interpretation.

107.—(1) In this Act, unless the context otherwise requires—

“adoption order” means an order under section 8(1);

“adoption society” has the same meaning as in the 1958 Act;

“approved adoption society” means an adoption society approved under Part I;

“area”, in relation to a magistrates’ court, means the commission area (within the meaning of section 1 of the Administration of Justice Act 1973) for which the court is appointed;

“ authorised court ” shall be construed in accordance with section 100 ;

“ British adoption order ” means an adoption order, or any provision for the adoption of a child effected under the law of Northern Ireland or any British territory outside the United Kingdom ;

“ British territory ” means, for the purposes of any provision of this Act, any of the following countries, that is to say, the United Kingdom, the Channel Islands, the Isle of Man and a colony, being a country designated for the purposes of that provision by order of the Secretary of State or, if no country is so designated, any of those countries ;

“ child ”, except where used to express a relationship, means a person who has not attained the age of 18 ;

“ the Convention ” means the Convention relating to the adoption of children concluded at The Hague on 15th November 1965 and signed on behalf of the United Kingdom on that date ;

“ Convention adoption order ” means an adoption order made as mentioned in section 24(1) ;

“ Convention country ” means any country outside British territory, being a country for the time being designated by an order of the Secretary of State as a country in which, in his opinion, the Convention is in force ;

“ guardian ” means—

(a) a person appointed by deed or will in accordance with the provisions of the Guardianship of Infants Acts 1886 and 1925 or the Guardianship of Minors Act 1971 or by a court of competent jurisdiction to be the guardian of the child, and 1971 c. 3.

(b) in relation to the adoption of an illegitimate child, includes the father where he has custody of the child by virtue of an order under section 9 of the Guardianship of Minors Act 1971, or under section 2 of the Illegitimate Children (Scotland) Act 1930 c. 33. 1930 ;

“ home ” shall be construed in accordance with section 87(3) ;

“ local authority ” means in relation to England and Wales the council of a county (other than a metropolitan county), a metropolitan district, a London borough or the Common Council of the City of London ;

“ notice ” means a notice in writing ;

PART V

- 1949 c. 101. “relative” has the same meaning as in the 1958 Act ;
 “rules” means, in England and Wales, rules made under section 9(3) of the 1958 Act or made by virtue of section 9(4) of the 1958 Act under section 15 of the Justices of the Peace Act 1949 ;
- 1958 c. 5
 (7 & 8 Eliz. 2). “the 1958 Act” means the Adoption Act 1958 ;
 “United Kingdom national” means, for the purposes of any provision of this Act, a citizen of the United Kingdom and Colonies satisfying such conditions, if any, as the Secretary of State may by order specify for the purposes of that provision ;
 “voluntary organisation” means a body, other than a public or local authority, the activities of which are not carried on for profit.

(2) In this Act, in relation to Scotland, unless the context otherwise requires—

- “actual custody” means care and possession ;
 “legal custody” means custody ;
 “local authority” means a regional or islands council ; and
 “rules” means rules made by act of sederunt.

(3) Except so far as the context otherwise requires, any reference in this Act to an enactment shall be construed as a reference to that enactment as amended by or under any other enactment, including this Act.

(4) In this Act, except where otherwise indicated—

- (a) a reference to a numbered Part, section or Schedule is a reference to the Part or section of, or the Schedule to, this Act so numbered, and
 (b) a reference in a section to a numbered subsection is a reference to the subsection of that section so numbered, and
 (c) a reference in a section, subsection or Schedule to a numbered paragraph is a reference to the paragraph of that section, subsection or Schedule so numbered.

Amendments,
 repeals, com-
 mencement
 and transitory
 provisions.

108.—(1) Subject to the following provisions of this section—

- (a) the enactments specified in Schedule 3 shall have effect subject to the amendments specified in that Schedule (being minor amendments or amendments consequential on the preceding provisions of this Act), and
 (b) the enactments specified in Schedule 4 are repealed to the extent shown in column 3 of that Schedule.

(2) This Act, except the provisions specified in subsections (3) and (4), shall come into force on such date as the Secretary of State may by order appoint and different dates may be appointed for, or for different purposes of, different provisions.

(3) Sections 71, 72 and 82, this section, section 109 and paragraph 57 of Schedule 3 shall come into force on the passing of this Act.

(4) The following provisions of this Act shall come into force on 1st January 1976—

(a) sections 3, 8(9) and (10), 13, 59, 83 to 91, 94, 98, 99, 100 and 103 to 107 ;

(b) Schedules 1 and 2 ;

(c) in Schedule 3, paragraphs 1, 2, 3, 4, 6, 8, 9, 13(6) 15, 17, 18, 19, 20, 21(1) (2) and (4), 22 to 25, 27(b), 29, 33, 34 (b), 35, 36 (b), 38, 39 (c) (d) and (e), 40, 43, 48, 49, 51 (a), 52 (f) (ii) and (g) (ii), 54, 55, 58 to 63, 65 to 70, 75 (3), 77, 78, 81 and 83 ;

(d) Parts I, II and III of Schedule 4.

(5) Until the date appointed under subsection (2) for sections 4 to 7, in this Act and in the 1958 Act “adoption agency” means a local authority or a registered adoption society within the meaning of the 1958 Act.

(6) Until the date so appointed for section 12, section 5(1) of the 1958 Act shall, in relation to an application made after 31st December 1975 for an adoption order, have effect with the addition at the end of paragraph (b) of the following words “or

(c) has seriously ill-treated the child and that (whether because of the ill-treatment or for other reasons) the rehabilitation of the child within the household of that person is unlikely.”

(7) Until the date so appointed for section 18, section 21A of the Children and Young Persons Act 1969 shall have effect as if for references to section 25 there were substituted references to section 53 of the 1958 Act.

(8) An order under subsection (2) may make such transitional provision as appears to the Secretary of State to be necessary or expedient in connection with the provisions thereby brought into force, including such adaptations of those provisions or any provision of this Act then in force or any provision of the 1958 Act as appear to him to be necessary or expedient in consequence of the partial operation of this Act.

PART V
Short title
and extent.

109.—(1) This Act may be cited as the Children Act 1975.

(2) This Act, except—

(a) section 68 ;

(b) paragraphs 10, 11 and 63 of Schedule 3 ; and

(c) Schedule 4 in so far as it repeals—

(i) the words “ or adoption ” in section 9(5) of the
Adoption Act 1968, and

(ii) the references in that Act to section 19 of
the Adoption Act 1958,

1968 c. 53.

1958 c. 5
(7 & 8 Eliz. 2).

does not extend to Northern Ireland.

(3) Subsection (1) of section 68 extends to the Channel
Islands.

SCHEDULES

SCHEDULE 1

Section 8.

STATUS CONFERRED BY ADOPTION OR LEGITIMATION
IN ENGLAND AND WALES

PART I

INTERPRETATION

1.—(1) This Part applies for the construction of this Schedule, except where the context otherwise requires.

(2) “Adoption” means adoption—

- (a) by an adoption order as defined in section 107,
- (b) by an adoption order made under the 1958 Act or the Adoption Act 1950 or any enactment repealed by the 1950 c. 26. Adoption Act 1950,
- (c) by an order made in Northern Ireland, the Isle of Man or in any of the Channel Islands,
- (d) which is an overseas adoption as defined by section 4(3) of the Adoption Act 1968, or 1968 c. 53.
- (e) which is an adoption recognised by the law of England and Wales, and effected under the law of any other country,

and cognate expressions shall be construed accordingly.

(3) “Legitimation” means—

- (a) legitimation under section 1 of the Legitimacy Act 1926, 1926 c. 60.
- (b) legitimation within section 8 of that Act (legitimation by extraneous law), or
- (c) legitimation (whether or not by virtue of subsequent marriage of the parents) recognised by the law of England and Wales, and effected under the law of any other country,

and cognate expressions shall be construed accordingly.

(4) These definitions of adoption and legitimation include, where the context admits, those effected before the passing of this Act, and the date of an adoption effected by an order is the date of the making of the order.

(5) “Existing”, in relation to any enactment or other instrument, means one passed or made before 1st January 1976 (and whether or not before the passing of this Act).

(6) The death of the testator is the date at which a will or codicil is to be regarded as made.

SCH. 1

Dispositions of property

2.—(1) In this Schedule—

“disposition” includes the conferring of a power of appointment and any other disposition of an interest in or right over property ;

“power of appointment” includes any discretionary power to transfer a beneficial interest in property without the furnishing of valuable consideration.

(2) This Schedule applies to an oral disposition of property as if contained in an instrument made when the disposition was made.

PART II

ADOPTION ORDERS

Status conferred by adoption

3.—(1) An adopted child shall be treated in law—

(a) where the adopters are a married couple, as if he had been born as a child of the marriage (whether or not he was in fact born after the marriage was solemnized) ;

(b) in any other case, as if he had been born to the adopter in wedlock (but not as a child of any actual marriage of the adopter).

(2) An adopted child shall be treated in law as if he were not the child of any person other than the adopters or adopter.

(3) It is hereby declared that this paragraph prevents an adopted child from being illegitimate.

(4) This paragraph has effect—

(a) in the case of an adoption before 1st January 1976, from that date, and

(b) in the case of any other adoption, from the date of the adoption.

(5) Subject to the provisions of this Part, this paragraph applies for the construction of enactments or instruments passed or made before the adoption or later, and so applies subject to any contrary indication.

(6) Subject to the provisions of this Part, this paragraph has effect as respects things done, or events occurring, after the adoption, or after 31st December 1975, whichever is the later.

Vocabulary

4. A relationship existing by virtue of paragraph 3 may be referred to as an adoptive relationship, and—

(a) a male adopter may be referred to as the adoptive father ;

(b) a female adopter may be referred to as the adoptive mother ;

- (c) any other relative of any degree under an adoptive relationship may be referred to as an adoptive relative of that degree, SCH. 1

but this paragraph does not prevent the term "parent", or any other term not qualified by the word "adoptive", being treated as including an adoptive relative.

Instruments and enactments concerning property

5.—(1) Paragraph 3—

- (a) does not apply to an existing instrument or enactment so far as it contains a disposition of property, and
- (b) does not apply to any public general Act in its application to any disposition of property in an existing instrument or enactment.

(2) The repeal by this Act of sections 16 and 17 of the 1958 Act, and of provisions containing references to those sections, does not affect their application in relation to a disposition of property effected by an existing instrument.

(3) For the purposes of this paragraph, and of paragraph 6, provisions of the law of intestate succession applicable to the estate of a deceased person shall be treated as if contained in an instrument executed by him (while of full capacity) immediately before his death.

6.—(1) Subject to any contrary indication, the rules of construction contained in this paragraph apply to any instrument, other than an existing instrument, so far as it contains a disposition of property.

(2) In applying paragraph 3(1) to a disposition which depends on the date of birth of a child or children of the adoptive parent or parents, the disposition shall be construed as if—

- (a) the adopted child had been born on the date of adoption,
- (b) two or more children adopted on the same date had been born on that date in the order of their actual births,

but this does not affect any reference to the age of a child.

(3) Examples of phrases in wills on which sub-paragraph (2) can operate are—

1. Children of A "living at my death or born afterwards".
2. Children of A "living at my death or born afterwards before any one of such children for the time being in existence attains a vested interest, and who attain the age of 21 years".
3. As in example 1 or 2, but referring to grandchildren of A, instead of children of A.
4. A for life "until he has a child", and then to his child or children.

Note. Sub-paragraph (2) will not affect the reference to the age of 21 years in example 2.

SCH. 1

(4) Paragraph 3(2) does not prejudice any interest vested in possession in the adopted child before the adoption, or any interest expectant (whether immediately or not) upon an interest so vested.

(5) Where it is necessary to determine for the purposes of a disposition of property effected by an instrument whether a woman can have a child, it shall be presumed that once a woman has attained the age of fifty-five she will not adopt a child after execution of the instrument, and notwithstanding paragraph 3 if she does so the child shall not be treated as her child or as the child of her spouse (if any) for the purposes of the instrument.

(6) In this paragraph "instrument" includes a private Act settling property, but not any other enactment.

(7) Paragraph 3(6) has effect subject to this paragraph.

Other enactments and instruments

1949 c. 76.
1956 c. 69. 7.—(1) Paragraph 3 does not apply for the purposes of the table of kindred and affinity in Schedule 1 to the Marriage Act 1949 or sections 10 and 11 (incest) of the Sexual Offences Act 1956.

(2) Paragraph 3 does not apply for the purposes of any provision of—

- 1971 c. 77. (a) the British Nationality Acts 1948 to 1965,
 (b) the Immigration Act 1971,
 (c) any instrument having effect under an enactment within paragraph (a) or (b), or
 (d) any other provision of the law for the time being in force which determines citizenship of the United Kingdom and Colonies.

1975 c. 14. (3) Paragraph 3 shall not prevent a person being treated as a near relative of a deceased person for the purposes of section 32 of the Social Security Act 1975 (payment of death grant), if apart from paragraph 3 he would be so treated.

(4) Paragraph 3 does not apply for the purposes of section 70(3)(b) or section 73(2) of the Social Security Act 1975 (payment of industrial death benefit to or in respect of an illegitimate child of the deceased and the child's mother).

(5) Subject to regulations made under section 72 of the Social Security Act 1975 (entitlement of certain relatives of deceased to industrial death benefit), paragraph 3 shall not affect the entitlement to an industrial death benefit of a person who would, apart from paragraph 3, be treated as a relative of a deceased person for the purposes of the said section 72.

Pensions

8. Paragraph 3(2) does not affect entitlement to a pension which is payable to or for the benefit of a child and is in payment at the time of his adoption.

Adoption of child by natural parents

SCH. 1

9. In the case of a child adopted by one of its natural parents as sole adoptive parent, paragraph 3(2) has no effect as respects entitlement to property depending on relationship to that parent, or as respects anything else depending on that relationship.

Peerages, etc.

10. An adoption does not affect the descent of any peerage or dignity or title of honour.

Insurance

11. Where a child is adopted whose natural parent has effected an insurance with a friendly society or a collecting society or an industrial insurance company for the payment on the death of the child of money for funeral expenses, the rights and liabilities under the policy shall by virtue of the adoption be transferred to the adoptive parents who shall for the purposes of the enactments relating to such societies and companies be treated as the person who took out the policy.

PART III

LEGITIMATION

Instruments concerning property

12.—(1) Subject to any contrary indication, the rules of construction contained in this paragraph apply to any instrument, other than an existing instrument, so far as the instrument contains a disposition of property.

(2) For the purposes of this paragraph, provisions of the law of intestate succession applicable to the estate of a deceased person shall be treated as if contained in an instrument executed by him (while of full capacity) immediately before his death.

(3) A legitimated person, and any other person, shall be entitled to take any interest as if the legitimated person had been born legitimate.

(4) A disposition which depends on the date of birth of a child or children of the parent or parents shall be construed as if—

(a) a legitimated child had been born on the date of legitimation,

(b) two or more children legitimated on the same date had been born on that date in the order of their actual births,

but this does not affect any reference to the age of a child.

(5) Examples of phrases in wills on which sub-paragraph (4) can operate are set out in paragraph 6(3).

SCH. 1

(6) If an illegitimate person, or a person adopted by one of his natural parents, dies (before the passing of this Act or later) and—

(a) his parents subsequently marry, and

(b) the deceased would, if living at the time of the marriage, have become a legitimated person,

1926 c. 60.

section 1(1) of the Legitimacy Act 1926 and this paragraph shall apply for the construction of the instrument so far as it relates to the taking of interests by, or in succession to, his spouse, children and remoter issue as if he was legitimated at the date of the marriage.

(7) In this paragraph “instrument” includes a private Act settling property, but not any other enactment.

(8) Section 1(1) of the Legitimacy Act 1926 has effect subject to the provisions of this paragraph.

(9) Part II of Schedule 4, which repeals enactments superseded by this paragraph, has effect as respects any instrument, other than an existing instrument.

Legitimation of adopted child

13.—(1) Paragraph 3 does not prevent an adopted child being legitimated under the Legitimacy Act 1926 if either natural parent is the sole adoptive parent.

(2) Where an adopted child (with a sole adoptive parent) is legitimated—

(a) paragraph 3(2) shall not apply after the legitimation to the natural relationship with the other natural parent, and

(b) revocation of the adoption order in consequence of the legitimation shall not affect Part II as it applies to any instrument made before the date of legitimation.

PART IV

SUPPLEMENTAL

Dispositions depending on date of birth

14.—(1) Where a disposition depends on the date of birth of a child who was born illegitimate and who—

(a) is adopted by one of the natural parents as sole adoptive parent, or

(b) is legitimated (or, if deceased, is treated as legitimated),

1969 c. 46.

paragraph 6(2) and paragraph 12(4) do not affect entitlement under Part II of the Family Law Reform Act 1969 (illegitimate children).

(2) Where a disposition depends on the date of birth of an adopted child who is legitimated (or, if deceased, is treated as

legitimated), paragraph 12(4) does not affect entitlement by virtue of paragraph 6(2).

(3) This paragraph applies for example where—

- (a) a testator dies in 1976 bequeathing a legacy to his eldest grandchild living at a specified time,
- (b) his daughter has an illegitimate child in 1977 who is the first grandchild,
- (c) his married son has a child in 1978,
- (d) subsequently the illegitimate child is adopted by the mother as sole adoptive parent or is legitimated,

and in all those cases the daughter's child remains the eldest grandchild of the testator throughout.

Protection of trustees and personal representatives

15.—(1) A trustee or personal representative is not under a duty, by virtue of the law relating to trusts or the administration of estates, to enquire, before conveying or distributing any property, whether—

- (a) any adoption has been effected or revoked, or
- (b) any person is illegitimate, or is adopted by one of his natural parents, and could be legitimated (or if deceased be treated as legitimated),

if that fact could affect entitlement to the property.

(2) A trustee or personal representative shall not be liable to any person by reason of a conveyance or distribution of the property made without regard to any such fact if he has not received notice of the fact before the conveyance or distribution.

(3) This paragraph does not prejudice the right of a person to follow the property, or any property representing it, into the hands of another person, other than a purchaser, who has received it.

Property devolving with peerages, etc.

16.—(1) This Schedule shall not affect the devolution of any property limited (expressly or not) to devolve (as nearly as the law permits) along with any peerage or dignity or title of honour.

(2) This paragraph applies only if and so far as a contrary intention is not expressed in the instrument, and shall have effect subject to the terms of the instrument.

Entails

17. It is hereby declared that references in this Schedule to dispositions of property include references to a disposition by the creation of an entailed interest.

PART V

EXTENT

18. This Schedule does not apply to Scotland.

Section 8

SCHEDULE 2

STATUS CONFERRED IN SCOTLAND BY ADOPTION

General

1.—(1) In Scotland, a child who is the subject of an adoption order shall, subject to the provisions of this Schedule, be treated in law—

- (a) where the adopters are a married couple, as if he had been born as a legitimate child of the marriage (whether or not he was in fact born after the marriage was constituted);
- (b) in any other case, as if he had been born as a legitimate child of the adopter (but not as a child of any actual marriage of the adopter),

and as if he were not the child of any person other than the adopters or adopter.

(2) Where an illegitimate child has been adopted by one of his natural parents as sole adoptive parent and the adopter thereafter marries the other natural parent, sub-paragraph (1) shall not affect any enactment or rule of law whereby, by virtue of the marriage, the child is rendered the legitimate child of both natural parents.

(3) Sub-paragraph (1) does not apply in determining the prohibited degrees of consanguinity and affinity in respect of the law relating to marriage or in respect of the crime of incest, except that, on the making of an adoption order, the adopter and the child shall be deemed, for all time coming, to be within the said prohibited degrees in respect of the law relating to marriage.

(4) Sub-paragraph (1) does not apply for the purposes of any provision of—

- (a) the British Nationality Acts 1948 to 1965,
- (b) the Immigration Act 1971,
- (c) any instrument having effect under an enactment within paragraph (a) or (b), or
- (d) any other law for the time being in force which determines citizenship of the United Kingdom and Colonies.

(5) This paragraph has effect—

- (a) in the case of an adoption before 1st January 1976, from that date, and
- (b) in the case of any other adoption, from the date of the adoption.

(6) Subject to the provisions of this Schedule, this paragraph applies for the construction of any enactments or instruments passed or made before or after the commencement of this Act so far as the context admits.

(7) Subject to the provisions of this Schedule, this paragraph does not affect things done or events occurring before the adoption or, where the adoption took place before 1st January 1976, before that date.

SCH. 2

Pensions

2. The provision in paragraph 1(1) whereby a child who is the subject of an adoption order is to be treated in law as if he were not the child of any person other than the adopters or adopter shall not affect entitlement to a pension which is payable to, or for the benefit of, the child and is in payment at the time of his adoption.

Insurance

3. Where a child is adopted whose natural parent has effected an insurance with a friendly society or a collecting society or an industrial insurance company for the payment on the death of the child of money for funeral expenses, the rights and liabilities under the policy shall by virtue of the adoption be transferred to the adoptive parents who shall for the purposes of the enactments relating to such societies and companies be treated as the person who took out the policy.

Social Security

4.—(1) Paragraph 1 shall not prevent a person being treated as a near relative of a deceased person for the purposes of section 32 of the Social Security Act 1975 (payment of death grant), if apart 1975 c. 14. from paragraph 1 he would be so treated.

(2) Paragraph 1 does not apply for the purposes of section 70(3)(b) or section 73(2) of the Social Security Act 1975 (payment of industrial death benefit to or in respect of an illegitimate child of the deceased and the child's mother).

(3) Subject to regulations made under section 72 of the Social Security Act 1975 (entitlement of certain relatives of deceased to industrial death benefit), paragraph 1 shall not affect the entitlement to an industrial death benefit of a person who would, apart from paragraph 1, be treated as a relative of a deceased person for the purposes of the said section 72.

Succession and Property

5.—(1) Paragraph 1 does not affect the existing law relating to adopted persons in respect of—

- (a) the succession to a deceased person (whether testate or intestate), and
- (b) the disposal of property by virtue of any inter vivos deed.

(2) In section 23 of the Succession (Scotland) Act 1964 (adopted 1964 c. 41. person to be treated for purposes of succession, etc., as child of adopter)—

- (a) in subsection (3) (property devolving along with a title or honour, etc.), after "this section" there is inserted "or in the Children Act 1975";

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(b) in subsection (5) (meaning of "adoption order"), for the words from "an order" to "Northern Ireland" there are substituted the words—

"(a) an adoption order under the Children Act 1975 ;

1958 c. 5.
(7 & 8 Eliz. 2)

(b) an adoption order under the Adoption Act 1958 or the Adoption Act 1950 or any enactment repealed by the Adoption Act 1950 ;

1950 c. 26.

(c) an order effecting an adoption made in Northern Ireland, the Isle of Man or any of the Channel Islands ;

1968 c. 53.

(d) an "overseas adoption" as defined in section 4(3) of the Adoption Act 1968 ; or

(e) any other adoption recognised by the law of Scotland ;

(whether the order took effect before or after the commencement of this Act) ;".

(3) In section 24 of the said Act of 1964 (provisions supplementary to section 23), after subsection (1) there is inserted the following subsection—

"(1A) Where, in relation to any purpose specified in section 23(1) of this Act, any right is conferred or any obligation is imposed, whether by operation of law or under any deed coming into operation after the commencement of the Children Act 1975, by reference to the relative seniority of the members of a class of persons, then, without prejudice to any entitlement under Part I of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 of an illegitimate child who is adopted by one of his parents,

1968 c. 70.

(a) any member of that class who is an adopted person shall rank as if he had been born on the date of his adoption, and

(b) if two or more members of the class are adopted persons whose dates of adoption are the same, they shall rank as between themselves in accordance with their respective times of birth."

(4) In section 37(1) of the said Act of 1964 (exclusion from Act of matters relating to titles, etc.), after "nothing in this Act" there is inserted "or (as respects paragraph (a) of this subsection) in the Children Act 1975".

Adoption and Legitimation

6.—(1) In section 26 of the Adoption Act 1958, after subsection (1) there is inserted the following subsection—

"(1A) Subsection (1) above does not apply to Scotland, and where the natural parents of an illegitimate child, one of whom has adopted him in Scotland, have subsequently married each other, the court by which the adoption order was made may, on the application of any of the parties concerned, revoke that order."

(2) Section 1 of the Legitimation (Scotland) Act 1968, (requirements and effects of legitimation) is renumbered subsection (1) and at the end there is added the following subsection—

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“(2) Subsection (1) above shall apply in relation to an illegitimate person who has been adopted by one of his natural parents as sole adoptive parent, where the adopter thereafter marries the other natural parent, as it applies in relation to any illegitimate person, to the effect of rendering that person the legitimate child of both natural parents; and in this Act “illegitimate”, “legitimated” and cognate expressions shall be construed accordingly.”.

(3) In section 6(2) of the said Act of 1968, for the words from “of an adoption order” to “1958” there are substituted the words “(under this section or otherwise) of any adoption order within the meaning of Schedule 2 to the Children Act 1975, in consequence of the marriage of the parents of the adopted person to each other”.

Interpretation

7. In this Schedule, “adoption order” means—

- (a) an adoption order as defined in section 107;
- (b) an adoption order under the 1958 Act or the Adoption Act 1950 or any enactment repealed by the Adoption Act 1950; 1950 c. 26,
- (c) an order effecting an adoption made in Northern Ireland, the Isle of Man or any of the Channel Islands;
- (d) an “overseas adoption” as defined in section 4(3) of the Adoption Act 1968; or 1968 c. 53.
- (e) any other adoption recognised by the law of Scotland;

(whether the order took effect before or after the commencement of this Act); and cognate expressions shall be construed accordingly.

SCHEDULE 3

Section 108.

MINOR AND CONSEQUENTIAL AMENDMENTS

Children and Young Persons Act 1933 (23 and 24 Geo. 5 c. 12)

1. In section 1(1)(b), for the words “one hundred pounds” there are substituted the words “£400”.

Children and Young Persons (Scotland) Act 1937 (c. 37)

2. In section 12(1)(b) for the words “twenty-five pounds” there is substituted “£400”.

Education Act 1944 (c. 31)

3. In section 106, the following subsection is substituted for subsection (4)—

“(4) In this section ‘guardian’ means the person having legal custody of the child or young person, as defined by section 86 of the Children Act 1975.”

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Children Act 1948 (c. 43)

4. In section 3(8) for the words "twenty pounds" and "two months" there are substituted respectively the words "£400" and "three months".

5. In section 4—

(a) in subsection (3)(a) after the words "parent or guardian" there are inserted the words "or custodian";

(b) for subsection (3)(b) there is substituted—

"(b) in the case of a resolution passed by virtue of paragraph (b), (c) or (d) of subsection (1) of the said section 2, by the person who, but for the resolution, would have the parental rights and duties in relation to the child,".

6. In section 43(1), for the words "and the Adoption Act 1968" there are substituted the words "the Adoption Act 1968 and the Children Act 1975".

Marriage Act 1949 (c. 76)

7. In section 3(1), after the words "shall be required" there are inserted the words "unless the infant is subject to a custodianship order, when the consent of the custodian and, where the custodian is the husband or wife of a parent of the infant, of that parent shall be required".

8. In Part I of Schedule 1—

(a) after "Mother" there is inserted "Adoptive mother or former adoptive mother";

(b) after "Daughter" there is inserted "Adoptive daughter or former adoptive daughter";

(c) after "Father" there is inserted "Adoptive father or former adoptive father";

(d) after "Son" there is inserted "Adoptive son or former adoptive son".

9. In Schedule 2 in paragraph 2(b) after the words "deceased parent" there are inserted the words "or by the court under section 3 of the Guardianship of Minors Act 1971".

Maintenance Orders Act 1950 (c. 37)

10. In section 15, after the words "Maintenance Orders (Reciprocal Enforcement) Act 1972" there are inserted the words "or sections 33 to 45 of the Children Act 1975".

11. In section 16(2)(a), after sub-paragraph (v) there are inserted the following sub-paragraphs—

"(vi) section 4 of the Affiliation Proceedings Act 1957 on an application made under section 45 of the Children Act 1975;

(vii) section 34(1)(b) of the Children Act 1975;".

Magistrates' Courts Act 1952 (c. 55)

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12. In section 56(1) (meaning of "domestic proceedings"), the following paragraph is inserted after paragraph (e)—

"(f) under the Adoption Act 1958 or Part I or II of the Children Act 1975",

and there are added at the end the following words "or proceedings on an information".

Births and Deaths Registration Act 1953 (c. 20)

13.—(1) For "living new-born child" in each place where it occurs, except sections 6, 7, 8, 34(3) and 36, there is substituted "still-born child".

(2) In section 1(2) after paragraph (d) there is added—

"(e) in the case of a still-born child found exposed, the person who found the child."

(3) In section 14(1)(a) after "section 10" there is inserted "or 10A".

(4) In section 30 after subsection (1) there is inserted the following subsection—

"(1A) The Registrar General shall cause an index to be made and kept in the General Register Office of the entries in the register kept by him under section 3A of this Act."

(5) In section 34—

(a) in subsection (2) after paragraph (c) there is added the following paragraph—

"(d) in relation to the re-registration of a birth under section 9(5) of this Act";

(b) in subsection (3) after "new-born child" there is inserted "or still-born child".

(6) In section 41—

(a) after the definition of "disposal" there is inserted the following definition—

"'father', in relation to an adopted child, means the child's natural father;";

(b) after the definition of "the Minister" there is inserted the following definition—

"'mother', in relation to an adopted child, means the child's natural mother;".

Affiliation Proceedings Act 1957 (c. 55)

14. In section 5(2) there is inserted at the end the following paragraph—

"(e) section 45 of the Children Act 1975 (which enables the custodian of a child to apply for an affiliation order under this Act within three years after the making of the custodianship order)."

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Housing Act 1957 (c. 56)

15. In Schedule 2, in paragraph 4(7) for the words "any illegitimate son or daughter, and any adopted son or daughter" there are substituted the words "and any illegitimate son or daughter".

Children Act 1958 (6 & 7 Eliz. 2 c. 65)

16. In section 2, as it applies in England and Wales,—

(a) in subsection (1), after the word "guardian" there is inserted the word "custodian";

(b) in subsection (4A),—

(i) for the words "registered adoption society as is referred to in Part II of the Adoption Act 1958" there are substituted the words "adoption society approved under Part I of the Children Act 1975", and

(ii) for the words "that Act" there are substituted the words "the Adoption Act 1958".

17. In section 2 as it applies to Scotland, after subsection (4) there is inserted the following subsection—

"(4A) A child is not a foster child for the purposes of this Part of this Act while he is placed in the care and possession of a person who proposes to adopt him under arrangements made by such an adoption agency as is referred to in Part I of the Children Act 1975 or while he is a protected child within the meaning of Part IV of the Adoption Act 1958."

18. In section 6 for the words "obtained their consent" there are substituted the words "obtained their written consent".

19. In section 14(2), for the words "one hundred pounds" there are substituted the words "£400".

20. In section 37(2), for the words "one hundred pounds" there are substituted the words "£400".

Adoption Act 1958 (7 & 8 Eliz. 2. c. 5)

21.—(1) For "Adoption Rules" in each place where it occurs there is substituted "rules".

(2) For "infant" and "infants" in each place where they occur there are respectively substituted "child" and "children".

(3) For "registered adoption society" in each place where it occurs there is substituted "approved adoption society".

(4) For "care and possession" in each place where it occurs there is substituted "actual custody".

22. In section 9(3), for "this Part of this Act" in each place where it occurs there is substituted "the relevant provisions", and at the end there is inserted—

"In this subsection 'the relevant provisions' means this Part, Part III and Part V of this Act and Part I of the Children Act 1975."

23. In section 11(2), for "this Part of this Act" in each place where it occurs there is substituted "the relevant provisions", and at the end there is inserted—

"In this subsection 'the relevant provisions' means this Part and Parts III and V of this Act and Part I of the Children Act 1975."

24. In section 21(1) for the words from "the form" to the end there is substituted "such form as the Registrar General may by regulations specify".

25. In section 23(1) for the words from "the form" to the end there is substituted "such form as the Registrar General for Scotland may by regulations specify".

26. In section 26(2) after the words "adoption order" there are inserted the words "other than a Convention adoption order".

27. In section 32—

(a) the following subsections are substituted for subsection (1)—

"(1) The Secretary of State may by regulations prohibit unincorporated bodies from applying for approval under section 4 of the Children Act 1975 (Approval of adoption societies); and he shall not approve any unincorporated body whose application is contrary to regulations made under this subsection.

(1A) The Secretary of State may make regulations for any purpose relating to the exercise of its functions by an approved adoption society."

(b) in subsection (2), for "(1)" there is substituted "(2)" and for the words from "twenty-five pounds" to the end of the subsection there is substituted the word "£400";

(c) the following subsection is added after subsection (3)—

"(4) Regulations under this section may make different provisions in relation to different cases or classes of cases and may exclude certain cases or classes of cases."

28. In section 33—

(a) in subsection (1)—

(i) for "registered by the authority under this Part of this Act" there is substituted "approved under Part I of the Children Act 1975";

(ii) for "the exercise of" to the end there is substituted "its own information or that of the Secretary of State";

(b) in subsection (2), for "by statutory declaration" there is substituted "in a manner specified in the notice".

29. In section 35(6) for the word "six" there is substituted the word "three" and for the words "one hundred pounds" there are substituted the words "£400".

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30. In section 36—

(a) in subsection (1) for the words “ subsection (2) of section 3 of this Act ” there are substituted the words “ section 18(1) of the Children Act 1975 ” ; and

(b) for subsection (3), there is substituted the following—

“ (3) A local authority which receives such notice as aforesaid in respect of a child whom the authority know to be in the care of another local authority shall, not more than seven days after the receipt of the notice, inform that other authority in writing that they have received the notice.”

31. In section 37—

(a) in subsection (1) for the words “ subsection (2) of section 3 of this Act ” there are substituted the words “ section 18(1) of the Children Act 1975 ” ;

(b) the following subsections are substituted for subsection (4)—

“ (4) A protected child ceases to be a protected child—

(a) on the appointment of a guardian for him under the Guardianship of Minors Act 1971 ;

(b) on the notification to the local authority for the area where the child has his home that the application for an adoption order has been withdrawn ;

(c) on the making of any of the following orders in respect of the child—

(i) an adoption order ;

(ii) an order under section 17 of the Children Act 1975 ;

(iii) a custodianship order ;

(iv) an order under section 42, 43 or 44 of the Matrimonial Causes Act 1973 ; or

(d) on his attaining the age of 18,

whichever first occurs.

(4A) In relation to Scotland—

(a) subsection (4) does not apply ; and

(b) a protected child ceases to be a protected child when—

(i) the application for an adoption order lapses or is withdrawn ;

(ii) the application for an adoption order is granted or otherwise determined ;

(iii) an order is made awarding custody of the child ;

(iv) an order is made appointing a guardian of the child ; or

(v) the child attains the age of 18.”.

32. In section 40(6) for the words from the beginning to “ that is to say ” there are substituted the following words “ The particulars referred to in subsection (4) of this section are ”.

33. In section 44(2), for the word "six" there is substituted the word "three" and for the words "one hundred pounds" there are substituted the words "£400".

34. In section 50—

- (a) in subsection (1), in paragraph (b), for "any consent" there is substituted "any agreement or consent";
- (b) in subsection (2), for the word "six" there is substituted the word "three" and for the words "one hundred pounds" there are substituted the words "£400";
- (c) in subsection (3), for "adoption society" there is substituted "approved adoption society".

35. In section 51(2), for the words "fifty pounds" there is substituted the word "£400".

36. In section 52(1)—

- (a) for the words "fifty-three of this Act" there are substituted the words "twenty-five of the Children Act 1975"; and
- (b) for the word "six" there is substituted the word "three" and for the words "one hundred pounds" there are substituted the words "£400".

37. In section 55, after the words "this Act" there are inserted the words "or Part I of the Children Act 1975".

38. For section 56 there is substituted the following section

"Rules and regulations. 56.—(1) Any power to make rules or regulations conferred by this Act on the Lord Chancellor, the Secretary of State, the Registrar General or the Registrar General for Scotland shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(2) The Registrar General shall not make regulations under section 20A or 21 of this Act except with the approval of the Secretary of State.

(3) The Registrar General for Scotland shall not make regulations under section 23 of this Act except with the approval of the Secretary of State.

(4) The Statutory Instruments Act 1946 shall apply to a statutory instrument containing regulations made for the purposes of this Act by the Registrar General for Scotland as if the regulations had been made by a Minister of the Crown."

39. In section 57(1)—

- (a) for the definition of "adoption order" there is substituted "'adoption order' means an order under section 1 of this Act or section 8(1) of the Children Act 1975";
- (b) there are inserted after the definition of "adoption society" the words "'approved adoption society' means an adoption society approved under Part I of the Children Act 1975";

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(c) after the definition of “body of persons” there are inserted the following definitions—

““child”, except where used to express a relationship, means a person who has not attained the age of 18;

“Convention adoption order” has the same meaning as in the Children Act 1975;”,

(d) for the definition of “guardian” there is substituted “‘guardian’ means—

(a) a person appointed by deed or will in accordance with the provisions of the Guardianship of Infants Acts 1886 and 1925 or the Guardianship of Minors Act 1971 or by a court of competent jurisdiction to be the guardian of the child, and

(b) in the case of an illegitimate child, includes the father where he has custody of the child by virtue of an order under section 9 of the Guardianship of Minors Act 1971, or under section 2 of the Illegitimate Children (Scotland) Act 1930;”,

(e) after the definition of “relative” there is inserted the following definition—

““voluntary organisation” means a body other than a public or local authority the activities of which are not carried on for profit.”

40. After section 57(1) there is inserted—

“(1A) In this Act, in relation to Scotland, unless the context otherwise requires “actual custody” means care and possession.”.

County Courts Act 1959 (c. 22)

41. In section 109(2) the following paragraph is inserted after paragraph (g)—

“(h) any proceedings under the Guardianship of Minors Acts 1971 and 1973 or the Children Act 1975.”

Children and Young Persons Act 1963 (c. 37)

42. In section 49(1), for the words “twenty pounds” there are substituted the words “£100”.

Perpetuities and Accumulations Act 1964 (c. 55)

43. In section 4, the following subsection is inserted at the end—

“(7) For the avoidance of doubt it is hereby declared that a question arising under section 3 of this Act or subsection (1)(a) above of whether a disposition would be void apart from this section is to be determined as if subsection (6) above had been a separate section of this Act.”

Adoption Act 1964 (c. 57)

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44. In section 1, the following subsection is substituted for subsection (5)—

“(5) Section 8(3) and (4) of, and paragraph 11 of Schedule 1 and paragraph 3 of Schedule 2 to, the Children Act 1975 apply in relation to a child who is the subject of an order which is similar to an order under section 25 of that Act and is made (whether before or after this subsection has effect) in Northern Ireland, the Isle of Man or any of the Channel Islands, as they apply in relation to a child who is the subject of an adoption order.”

45. In section 3(3)—

- (a) for the words “section 53 of the said Act of 1958” there are substituted the words “section 25 of the Children Act 1975”;
- (b) for the words from “the word ‘Provisionally’” to the end of the subsection there are substituted the words “the words ‘Proposed Foreign Adoption’ or, as the case may require, ‘Proposed Foreign Re-adoption’ followed by the name, in brackets, of the country in which the order was made.”

Health Services and Public Health Act 1968 (c. 46)

46. For section 64(3)(a) there is substituted—

“(a) ‘the relevant enactments’ means—

(i) Parts III and IV of the Children and Young Persons Act 1933,

(ii) the National Health Service Act 1946,

(iii) Part III of the National Assistance Act 1948,

(iv) the Children Act 1948,

(v) the Adoption Act 1958,

(vi) the Children Act 1958,

(vii) section 9 of the Mental Health Act 1959,

(viii) section 10 of the Mental Health Act 1959, so far as it relates to cases mentioned in paragraph (a) of that section,

(ix) section 2(1)(f) of the Matrimonial Proceedings (Magistrates’ Courts) Act 1960,

(x) the Children and Young Persons Act 1963, except Part II and section 56,

(xi) this Act,

(xii) the Adoption Act 1968,

(xiii) section 7(4) of the Family Law Reform Act 1969,

(xiv) the Children and Young Persons Act 1969, except so far as it relates to any voluntary home designated as mentioned in section 39(1) of that Act as a controlled or assisted community home,

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- (xv) section 43 of the Matrimonial Causes Act 1973,
- (xvi) the National Health Service Reorganisation Act 1973,
- (xvii) the Children Act 1975.”

47. For section 65(3)(b) there is substituted—

“ (b) ‘the relevant enactments’ means—

- (i) Parts III and IV of the Children and Young Persons Act 1933,
- (ii) Part III of the National Health Service Act 1946,
- (iii) Part III of the National Assistance Act 1948,
- (iv) the Children Act 1948,
- (v) the Adoption Act 1958,
- (vi) section 3 of the Disabled Persons (Employment) Act 1958,
- (vii) the Children Act 1958,
- (viii) section 9 of the Mental Health Act 1959,
- (ix) section 10 of the Mental Health Act 1959, so far as it relates to cases mentioned in paragraph (a) of that section,
- (x) section 2(1)(f) of the Matrimonial Proceedings (Magistrates’ Courts) Act 1960,
- (xi) the Children and Young Persons Act 1963, except Part II and section 56,
- (xii) this Act,
- (xiii) the Adoption Act 1968,
- (xiv) section 7(4) of the Family Law Reform Act 1969,
- (xv) the Children and Young Persons Act 1969,
- (xvi) section 43 of the Matrimonial Causes Act 1973,
- (xvii) the National Health Service Reorganisation Act 1973,
- (xviii) the Children Act 1975.”

Social Work (Scotland) Act 1968 (c. 49)

48. In section 2(2) (functions of the social work committee), the following paragraph is inserted after paragraph (g)—

“ (h) the Children Act 1975.”

49. For section 5(2) there is substituted—

“ (2) The Secretary of State may make regulations in relation to—

- (a) the performance of the functions assigned to local authorities by this Act ;
- (b) the activities of voluntary organisations in so far as those activities are concerned with the like purposes ;

- (c) the performance of the functions referred to social work committees under section 2(2)(b) to (e) and (h) of this Act;
- (d) the performance of the functions transferred to local authorities by section 1(4)(a) of this Act.”.

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50. In section 6(1)(b), after sub-paragraph (ii) there is inserted the following sub-paragraph—

“(iii) a child who has been placed for adoption by an adoption agency (within the meaning of section 1 of the Children Act 1975);”.

51. In section 10—

- (a) in subsection (1), for the words from “with his functions” to the end there is substituted “with—

(a) his functions;

(b) the functions of local authorities,

under this Act or under the enactments specified in paragraph (a) of section 1(4) and paragraphs (b) to (e) and (h) of section 2(2) of this Act, in circumstances where it appears to the Secretary of State that such grants or loans should be made.”;

- (b) after subsection (3) there is inserted—

“(3A) In subsection (3) above, “voluntary organisation the sole or primary object of which is to promote social welfare” includes an adoption society approved under Part I of the Children Act 1975.”.

52. In section 17—

- (a) in subsection (3), for “section 16” there is substituted “section 16(1)(a)” and after “local authority” there is inserted “, in whom are vested in accordance with the resolution the parental rights and powers in respect of a child,”;

- (b) the following subsection is inserted after subsection (3)—

“(3A) A resolution under section 16(1)(b) of this Act shall not prevent the voluntary organisation, in whom are vested in accordance with the resolution the parental rights and powers in respect of a child, from allowing, either for a fixed period or until the voluntary organisation otherwise determine, the care of the child to be taken over by, and the child to be under the control of, a parent, guardian, relative or friend in any case where it appears to the voluntary organisation to be for the benefit of the child.”;

- (c) in subsection (4), for “section 16” there is substituted “section 16(1)(a)”;

- (d) in subsection (6), for the words “the said section 16” there is substituted “section 16 of this Act”;

- (e) in subsection (7), after the words “local authority” there are inserted the words “or a voluntary organisation”;

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(f) in subsection (8)—

(i) for the words “to whom this section applies” there is substituted “, in respect of whom a resolution under section 16 of this Act is in effect,”; and

(ii) for the words “fifty pounds” there is substituted “£400”;

(g) in subsection (9)—

(i) for the words “where a local authority have, in accordance with subsection (3) of this section, allowed” there is substituted—

“Where—

(a) a local authority have, in accordance with subsection (3) of this section; or

(b) a voluntary organisation have, in accordance with subsection (3A) of this section, allowed”;

(ii) for the words “fifty pounds” there is substituted “£400”.

53. In section 18—

(a) in subsection (2), for “section 16” there is substituted “section 16(1)(a)”;

(b) in subsection (3)—

(i) in paragraph (a), for “paragraph (a)” there is substituted “sub-paragraph (i)”;

(ii) for paragraph (b) there is substituted “(b) in the case of a resolution passed by virtue of circumstances specified in sub-paragraph (ii), (iii), or (iv) of subsection (1) of the said section 16, by the person who, but for the resolution, would have the parental rights and powers in relation to the child,”;

(iii) after the words “otherwise direct, the local authority” there are inserted the words “, and any voluntary organisation having parental rights and powers with respect to the child,”;

(c) in subsection (4), after the words “local authority” there are inserted the words “or voluntary organisation”.

54. In section 32(2)—

(a) for paragraphs (b) and (c) there is substituted—

“(b) he is falling into bad associations or is exposed to moral danger; or

(c) lack of parental care is likely to cause him unnecessary suffering or seriously to impair his health or development; or”;

(b) in paragraph (d), for the words “Children and Young Persons (Scotland) Act 1937” there is substituted “Criminal Procedure (Scotland) Act 1975”;

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(c) after paragraph (d) there is inserted—

“(dd) the child is, or is likely to become, a member of the same household as a person who has committed any of the offences mentioned in Schedule 1 to the Criminal Procedure (Scotland) Act 1975 ; or”.

55. In section 35(5)(a) at the end there is inserted “and to such other persons as may be prescribed ;”.

56. In section 44(5), after “20”, there is inserted “20A.”.

57. In section 49(3) for the words “The sheriff may examine the reporter and” there is substituted—

“The reporter, whether or not he is conducting the proceedings before the sheriff, may be examined by the sheriff ; and the sheriff may examine”.

58. In section 69—

(a) in subsection (1), at the end there are added the following words—

“; and a court, if satisfied that there are reasonable grounds for believing that the child is within any premises, may grant a search warrant authorising a constable to search those premises for the child.”.

(b) for subsection (5) there is substituted—

“(5) In this and the next following section any reference —

(a) to a child absconding includes a reference to his being unlawfully taken away ;

(b) to a child absconding from a place or from the control of a person includes a reference to his absconding while being taken to, or awaiting being taken to, that place or that person as the case may be.”.

59. In section 70, at the end there are added the following words—

“; and a court, if satisfied that there are reasonable grounds for believing that the child is within any premises, may grant a search warrant authorising a constable to search those premises for the child.”.

60. In section 71, for the words “one hundred pounds” there is substituted “£400”.

Adoption Act 1968 (c. 53)

61. In section 8(2)—

(a) for the words “form set out in Schedule 1 to the Act of 1958, as modified by this subsection” there are substituted the words “form specified for the purposes of this subsection in regulations made by the Registrar General under section 21 of the Act of 1958”; and

(b) the words from “and for the purposes” to the end are repealed.

SCH. 3

62. In section 8(5)—

(a) for paragraph (b) there is substituted—

“(b) for the references to section 21 of the Act of 1958 there shall be substituted references to section 23 of that Act ;” ;

(b) paragraph (c) is repealed ;

(c) for paragraph (d) there is substituted—

“(c) in subsection (4), for the reference to section 14 of the Births and Deaths Registration Act 1953 there shall be substituted a reference to section 20(1) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (which provides for re-registration of births in certain cases).”

63. In section 9(5), for the words “a specified order or an overseas adoption” there are substituted the words “or a specified order”.

64. In section 11(1)—

(a) for the definition of “adoption order” there is substituted the following definition—

““adoption order” means an order made under section 8 of the Children Act 1975 as a Convention adoption order ;” ;

(b) in the definition of “specified order” for the words “section 1 of this Act” there are substituted the words “sections 8(1) and 24 of the Children Act 1975”.

65. In section 12(2), for the words from “made by virtue of” to “any of those provisions)” there are substituted the words “containing rules made by the Lord Chancellor under subsection (1) of this section”.

Housing Act 1969 (c. 33)

66. In section 86(2) for the words “any illegitimate son or daughter and any adopted son or daughter” there are substituted the words “and any illegitimate son or daughter”.

Children and Young Persons Act 1969 (c. 54)

67. In section 1(2) the following paragraph is inserted after paragraph (b)—

“(bb) it is probable that the conditions set out in paragraph (a) of this subsection will be satisfied in his case, having regard to the fact that a person who has been convicted of an offence mentioned in Schedule 1 to the Act of 1933 is, or may become, a member of the same household as the child ;”.

68. The following section is inserted after section 11—

“Local
authority
functions
under
certain
supervision
orders.”

11A. The Secretary of State may make regulations with respect to the exercise by a local authority of their functions in a case where a person has been placed under their supervision by an order made under section 1(3)(b) or 21(2) of this Act.”

69. In section 21—

(a) the following subsection is inserted after subsection (2) —

“(2A) A juvenile court shall not make an order under subsection (2) of this section in the case of a person who has not attained the age of 18 and appears to the court to be in need of care or control unless the court is satisfied that, whether through the making of a supervision order or otherwise, he will receive that care or control.”;

(b) in subsection (3) for “the preceding subsection” there is substituted “subsection (2) of this section”.

70. The following section is inserted after section 21—

“Termination
of care
order on
adoption,
etc.”

21A. A care order relating to a child shall cease to have effect—

(a) on the adoption of the child ;

(b) if an order under section 14 or section 25 of the Children Act 1975 is made in relation to the child ;

(c) if an order similar to an order under section 25 of the Children Act 1975 is made in Northern Ireland, the Isle of Man or any of the Channel Islands in relation to the child.”

71. In section 27—

(a) in subsection (3), for the words “their general duty aforesaid” there are substituted the words “their general duty under section 12(1) of the Children Act 1948”;

(b) the following subsections are substituted for subsection (4) —

“(4) Without prejudice to their general duty under the said section 12, it shall be the duty of a local authority to review the case of each child in their care in accordance with regulations made under the following subsection.

(5) The Secretary of State may by regulations make provision as to—

(a) the manner in which cases are to be reviewed under this section ;

(b) the considerations to which the local authority are to have regard in reviewing cases under this section ; and

(c) the time when a child’s case is first to be reviewed and the frequency of subsequent reviews under this section.”

SCH. 3

72. In section 58(1), the following paragraph is inserted after paragraph (b)—

“(bb) premises in which a child is living with a person other than his parent, guardian, relative or custodian, with whom he has been placed by an adoption agency (within the meaning of section 1 of the Children Act 1975);”.

Administration of Justice Act 1970 (c. 31)

73.—(1) In Schedule 1—

(a) after “*Appellate Business*” there is inserted the following paragraph—

“Proceedings on appeal under section 4A of the Children Act 1948;”;

(b) at the end there is inserted the following paragraph—

“Proceedings on appeal under the Children Act 1975”.

(2) In Schedule 8—

(a) in paragraph 5, after the words “Social Security Act 1966” there are inserted the words “or section 45 of the Children Act 1975”;

(b) after paragraph 11, there is inserted the following paragraph—

“12. An order under section 34(1)(b) of the Children Act 1975 (payments of maintenance in respect of a child to his custodian).”.

Local Authority Social Services Act 1970 (c. 42)

74. In Schedule 1—

(a) at the end of the entry relating to the Adoption Act 1958 there are added the following words “Counselling services for adopted persons”;

(b) the following is inserted at the end—

“Children Act 1975 (c. 72)

Part I ... Maintenance of Adoption Service; function of local authority as adoption agency; applications for orders freeing children for adoption; inquiries carried out by local authorities in adoption cases.

Part II ... Application by local authority for revocation of custodianship order; inquiries carried out by local authority in custodianship cases.”.

Guardianship of Minors Act 1971 (c. 3)

75.—(1) In section 9—

(a) in subsection (2) for “any person (whether or not one of the parents)” there is substituted “one of the parents” and the words “or either of the parents” are repealed;

(b) in subsection (3), the proviso is repealed;

(c) in subsection (4), the words from “or (before or after the death of either parent)” to the end are repealed;

(d) the following subsections are inserted after subsection (4)—

“ (5) An order shall not be made under subsection (1) of this section giving custody to a person other than the mother or father.

(6) An order shall not be made under subsection (1) of this section at any time when the minor is free for adoption (within the meaning of section 12(6) of the Children Act 1975) ”.

(2) In section 13(2), after the words “ order for the payment of money ” there are inserted the words “ made by a magistrates’ court ”.

(3) In section 16—

(a) in subsection (1) for “ the High Court shall ” there is substituted “ the High Court may ”;

(b) in subsection (4) for “ the magistrates’ court may ” there is substituted “ the magistrates’ court shall ”;

(c) in subsection (5), for the words from “ section 9 ” to “ so given ” there are substituted the words “ section 3(3) or 4(3A) of the Guardianship Act 1973 for the discharge or variation of a supervision order or, as the case may be, an order giving the care of a minor to a local authority or an order requiring payments to be made to an authority to whom care of a minor is so given ”.

Attachment of Earnings Act 1971 (c. 32)

76. In Schedule 1—

(a) in paragraph 6, after the words “ Social Security Act 1966 ” there are inserted the words “ or section 45 of the Children Act 1975 ”;

(b) after paragraph 11, there is inserted the following paragraph—

“ 12. An order under section 34(1)(b) of the Children Act 1975 (payments of maintenance in respect of a child to his custodian). ”

Parliamentary and Other Pensions Act 1972 (c. 48)

77. In section 15(6), for the words “ a stepchild or adopted child ” there are substituted the words “ or a stepchild ”.

Matrimonial Causes Act 1973 (c. 18)

78. In section 44(1), for the words “ custody of any person ” there are substituted the words “ care of any person ”.

79. In section 50(1), at the end of paragraph (e) there are inserted the following words—

“ or

(f) proceedings to which section 100(7)(d) of the Children Act 1975 applies (certain applications for revocation and variation of custodianship etc. orders) ; ”.

SCH. 3

Guardianship Act 1973 (c. 29)

80.—(1) In section 4(3) for the words from “the following provisions” to the end there are substituted the following words “sections 12(2) and 13 of the Guardianship of Minors Act 1971 shall apply as if the order made under section 2 of this Act were an order under section 9 of the Guardianship of Minors Act 1971.”

(2) After section 4(3) there is inserted the following subsection—

“(3A) An order under section 2(2)(b) or (3) above relating to a minor may be varied or discharged by a subsequent order made on the application of either parent or after the death of either parent on the application of any guardian under the Guardianship of Minors Act 1971 or on the application of the local authority to whose care the minor was committed by the order under section 2(2)(b).”

81. In section 6(1), for “section 9 of the Guardianship of Minors Act 1971 or section” there is substituted “section 5 or 9 of the Guardianship of Minors Act 1971 or section 1(3) or”.

Legal Aid Act 1974 (c. 4)

82. In Schedule 1—

(a) for paragraph 3(d), there is substituted—

“(d) proceedings in which the making of an order under Part I of the Children Act 1975 is opposed by any party to the proceedings ;” ;

(b) the following paragraphs are inserted after paragraph 3(e)—

“(f) proceedings under Part II of the Children Act 1975 ;

(g) proceedings under section 63(2) of the Children Act 1975”.

Housing Act 1974 (c. 44)

83. In section 129(4), for the words “any illegitimate son or daughter and any adopted son or daughter” there are substituted the words “and any illegitimate son or daughter”.

SCHEDULE 4
FURTHER REPEALS
PART I
STATUS OF ADOPTED CHILD

Section 108.

Chapter	Short Title	Extent of Repeal
16 & 17 Geo. 5. c. 29.	Adoption of Children Act 1926.	The whole Act so far as unrepealed.
3 & 4 Geo. 6. c. 42.	Law Reform (Miscellaneous Provisions) (Scotland) Act 1940.	Section 2(1) and (3).
11 & 12 Geo. 6. c. 43.	Children Act 1948.	In section 59(1), in the definition of "parent", paragraph (a).
11 & 12 Geo. 6. c. 53.	Nurseries and Child-Minders Regulation Act 1948.	In section 13(2), in the definition of "relative" (as inserted by section 13 of the Adoption of Children Act 1949), paragraph (a).
12 & 13 Geo. 6. c. 76.	Marriage Act 1949.	In section 68(3), the words from "includes" to "but".
12, 13 & 14 Geo. 6. c. 98.	Adoption of Children Act 1949.	Section 13(1)(a).
14 & 15 Geo. 6. c. 11.	Administration of Justice (Pensions) Act 1950.	Section 26(2).
1 & 2 Eliz. 2. c. 20.	Births and Deaths Registration Act 1953.	In section 41, in the definition of "relative" the words from "and in relation to" to the end.
3 & 4 Eliz. 2. c. 18.	Army Act 1955.	In section 150(5), in the paragraph relating to a child of a person, the words "or adopted" and the words from "and in this paragraph" to the end of the paragraph.
3 & 4 Eliz. 2. c. 19.	Air Force Act 1955.	In section 15(5), in the paragraph relating to a child of a person, the words "or adopted" and the words from "and in this paragraph" to the end of the paragraph.
4 & 5 Eliz. 2. c. 69.	Sexual Offences Act 1956.	In section 28(4), in paragraph (a) the words from "has been adopted" to "a girl who" and the words "(and has not been so adopted)".
4 & 5 Eliz. 2. c. 70.	Marriage (Scotland) Act 1956.	In section 1(5), paragraph (a) and the words "or adoptive parent" in paragraph (b).
6 & 7 Eliz. 2. c. 65.	Children Act 1958.	In section 17, the definition of "parent".
6 & 7 Eliz. 2. c. 40.	Matrimonial Proceedings (Children) Act 1958.	In section 7(1)(b), the words "or an adopted".
7 & 8 Eliz. 2. c. 5.	Adoption Act 1958.	Section 7(3). Sections 13 and 14. Section 15(1), (2) and (3). Sections 16 and 17. Section 18(1). Section 25.

SCH. 4

Chapter	Short Title	Extent of Repeal
7 & 8 Eliz. 2. c. 5.— <i>cont.</i>	Adoption Act 1958.— <i>cont.</i>	In section 52(1) the words “(whether in law or in fact)”. In section 57(1), in the definition of “relative” paragraph (a). Section 58(2) and (3). In Schedule 5, paragraphs 1 to 4.
7 & 8 Eliz. 2. c. 65.	Fatal Accidents Act 1959.	In section 1, subsection (2)(a) and subsection (3).
7 & 8 Eliz. 2. c. 72.	Mental Health Act 1959.	In section 49, in subsection (2) the words from “an adopted person” to “as aforesaid”, and subsection (5).
8 & 9 Eliz. 2. c. 48.	Matrimonial Proceedings (Magistrates Courts) Act 1960.	In section 16(1), the words “or adopted” and “but does not include a child adopted by some other person or persons”, and the words from “and ‘adopted’” to the end.
8 & 9 Eliz. 2. c. 59.	Adoption Act 1960.	Section 1(2).
8 & 9 Eliz. 2. c. 61.	Mental Health (Scotland) Act 1960.	In section 45, in subsection (2) the words from “adopted person” to “person; and”; and subsection (5).
1964 c. 57.	Adoption Act 1964.	Section 1(1), (2) and (4).
1965 c. 49.	Registration of Births, Deaths and Marriages (Scotland) Act 1965.	In section 56(1), in the definition of “relative” the words from “and in relation to” to the end.
1965 c. 53.	Family Allowances Act 1965.	Section 17(4).
1967 c. 29.	Housing Subsidies Act 1967.	In section 24(3)(c), the word “adopted”.
1967 c. 81.	Companies Act 1967.	In section 30(2), the words “and adopted son” and “and adopted daughter”. In section 31(5), the words “and adopted son” and “and adopted daughter”.
1967 c. 88.	Leasehold Reform Act 1967.	In section 7(7), the words “and any adopted son or daughter”. In section 18(3), the words “and any adopted son or daughter”.
1968 c. 49.	Social Work (Scotland) Act 1968.	In section 94(1), in the definition of “parent”, paragraph (a).
1968 c. 53.	Adoption Act 1968.	Section 4(1) and (2). Section 10(2) and (3).
1968 c. 71.	Race Relations Act 1968.	In section 7(4) the words “and any adopted son or daughter”.
1971 c. 56.	Pensions (Increase) Act 1971.	In section 3(7), the words from “and includes” to the end.
1973 c. 16.	Education Act 1973.	In section 3(5), the words from “and a child” to the end.

SCH. 4

Chapter	Short Title	Extent of Repeal
1973 c. 18.	Matrimonial Causes Act 1973.	In section 52(1), the definition of "adopted" and, in the definition of "child", the words "or adopted".
1973 c. 45.	Domicile and Matrimonial Proceedings Act 1973.	In section 4(5), the words from "and in its application" to the end.
1975 c. 14.	Social Security Act 1975.	In section 32(3)(c), the words "the same relationship by adoption and to include also". In section 71(6), the words "and a parent by adoption". In section 161(2), the words "a son or daughter by adoption and". In Schedule 20, in the definition of "relative" the words "or adoption".
1975 c. 61.	Child Benefit Act 1975.	Section 24(3)(c).

The repeals of sections 16 and 17 of the 1958 Act, and of provisions containing references to those sections, have effect subject to paragraph 5(2) of Schedule 1, and the other repeals in this Part have effect as respect things done, or events occurring, after 31st December 1975.

PART II

LEGITIMATION

Chapter	Short Title	Extent of Repeal
16 & 17 Geo. 5 c. 60.	Legitimacy Act 1926.	Section 1(3). Sections 3 to 5. In section 8(2), the words from "and to the taking" to "of a legitimated person". In section 11, the definitions of "disposition", "intestate" and "entailed interest".
1969 c. 46.	Family Law Reform Act 1969.	Section 14(8). Section 15(4) and (6).

These repeals have effect subject to paragraph 12(9) of Schedule 1.

SCH. 4

PART III

MISCELLANEOUS

Chapter	Short Title	Extent of Repeal
23 & 24 Geo. 5 c. 12.	Children and Young Persons Act 1933.	In section 1, in subsection (1) (a), the words "not exceeding one hundred pounds", and in subsection (5), the words from "the maximum" to "pounds, and".
1937 c. 37.	Children and Young Persons (Scotland) Act 1937.	In section 12, in subsection (1)(a), the words "not exceed- ing one hundred pounds", and in subsection (5)(a) the words from "the maximum" to "pounds, and".
7 & 8 Eliz. 2. c. 5.	Adoption Act 1958.	In section 4(2), the words from "either" to "brought up". Section 7(1)(b) and (2). Section 21(3). In section 20(4), the words from "pursuant to" to "in force". Section 49. In section 57(1) the definition of "infant". Schedules 1 and 2. Section 54.
1963 c. 37.	Children and Young Per- sons Act 1963.	Section 54(1)(d).
1965 c. 49.	Registration of Births, Deaths and Marriages (Scotland) Act 1965.	
1968 c. 22.	Legitimation (Scotland) Act 1968.	In section 6(3), the words "or to subsection (1) of that section".
1968 c. 53.	Adoption Act 1968.	Sections 1 to 3. In section 9(5), the words "or adoption". In section 11(1), the definitions of "qualified infant", "qualified person" and "qualified spouses". In section 12(1), the words "or under Part I of the Act of 1958 in its application to adoption orders and proposed adoption orders", the words "or the said Part I" in both places where they occur and the words from "and the rules" to the end. In section 14(3), the words from "except the" to "1958 and".
1969 c. 54.	Children and Young Per- sons Act 1969.	Section 27(2).
1973 c. 29.	Guardianship Act 1973.	Section 3(5).

These repeals take effect on 1st January 1976.

PART IV
ADOPTION ORDERS

SCH. 4

Chapter	Short Title	Extent of Repeal
7 & 8 Eliz. 2. c. 5.	Adoption Act 1958.	Sections 1 and 2. Sections 4 and 5. Section 7(1)(a) and (c) and (3). Section 9(1) and (5). Section 10. Section 11(1) and (3). Section 12. Section 21(2). Section 4.
1966 c. 19.	Law Reform (Miscellaneous Provisions) (Scotland) Act 1966.	
1971 c. 3.	Guardianship of Minors Act 1971.	Section 16(2).

These repeals take effect on the date section 8(1) comes into force.

PART V
CHILDREN IN CARE OF LOCAL AUTHORITIES

Chapter	Short Title	Extent of Repeal
10 & 11 Geo. 6. c. 43.	Children Act 1948.	Section 3(1) and (2).
7 & 8 Eliz. 2. c. 5.	Adoption Act 1958.	Section 15(4) and (5).
7 & 8 Eliz. 2. c. 72.	Mental Health Act 1959.	In Schedule 7, the entry relating to the Children Act 1948.
1963 c. 37.	Children and Young Persons Act 1963.	Section 48.
1968 c. 49.	Social Work (Scotland) Act 1968.	Section 17(1) and (2). In section 18(4) the words " but where on such an application the court appoints a guardian the resolution shall cease to have effect ".
1971 c. 3.	Guardianship of Minors Act 1971.	In section 5(2) the words from " but where " to the end.

These repeals take effect on the date sections 57 and 74 come into force.

SCH. 4

PART VI

REGISTRATION OF BIRTHS

Chapter	Short Title	Extent of Repeal
1953 c. 20.	Births and Deaths Registration Act 1953.	In section 3, the words "and of any person in whose charge the child may be placed" and the proviso. In section 6, the words "or finding" and in that section and in section 7 the words "or from the date when any living new-born child is found exposed". In section 8, the words "or, in the case of a living new-born child found exposed, from the date of the finding". In section 36(a), the words "or any living new born child". Section 27(2), (3), (4) and (5).
1969 c. 46.	Family Law Reform Act 1969.	

These repeals take effect on the date section 92 comes into force.

PART VII

ADOPTION AGENCIES

Chapter	Short Title	Extent of Repeal
7 & 8 Eliz. 2. c. 5.	Adoption Act 1958.	Section 28(2). Sections 30 and 31. In section 32(3) the words from "children" to the end. In section 57(1) the definitions of "charitable association" and "registered adoption society". Schedule 3.
1970 c. 42.	Local Authority Social Services Act 1970.	In column 2 of Schedule 1, the words "Making etc. arrangements for the adoption of children; regulation of adoption societies."

These repeals take effect on the date section 4 comes into force.

PART VIII

SCH. 4

ADOPTION: EVIDENCE OF AGREEMENT & GUARDIANS AD LITEM

Chapter	Short Title	Extent of Repeal
7 & 8 Eliz. 2. c. 5.	Adoption Act 1958.	Section 6. Section 9(7) and (8). Section 11(4) and (5).

These repeals take effect on the date section 20 comes into force.

PART IX

INQUIRIES ETC. BY ADOPTION AGENCIES

Chapter	Short Title	Extent of Repeal
7 & 8 Eliz. 2. c. 5.	Adoption Act 1958.	Section 3. Section 8. Section 53. In section 57(1), the definition of "Compulsory School age".

These repeals take effect on the date section 18 comes into force.

PART X

GRANTS ETC. FOR VOLUNTARY ORGANISATIONS

Chapter	Short Title	Extent of Repeal
10 & 11 Geo. 6 c. 43. 1969 c. 54.	Children Act 1948. Children and Young Per- sons Act 1969.	Section 45(2). Section 46. Section 65(2).

These repeals take effect on the date paragraphs 46 and 47 of
Schedule 3 come into force.

SCH. 4

PART XI
PROTECTED CHILDREN

Chapter	Short Title	Extent of Repeal
7 & 8 Eliz. 2. c. 5.	Adoption Act 1958.	In section 37(1), paragraph (a), the words " of the person first mentioned in paragraph (a) of this subsection or, as the case may be," and the words " but is not a foster child within the meaning of Part I of the Children Act 1958 ". Section 37(2) and (5). Section 40(1), (2) and (3). Sections 41 and 42. In section 43(1), the words from " or in contravention " to " of this Act ".

These repeals take effect on the date paragraph 31 of Schedule 3 comes into force.

PART XII
CUSTODIANSHIP

Chapter	Short Title	Extent of Repeal
1973 c. 29.	Guardianship Act 1973.	In section 2, in subsection (2) (b), the words " or to any other individual " and in subsection (4)(a) the words " or to any person given the custody of the minor ". In section 3(3), the words from " or (before " to " section 9(1) of that Act " and the words from " and section 16(5) " to the end.

These repeals take effect on the date section 33 comes into force.

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